



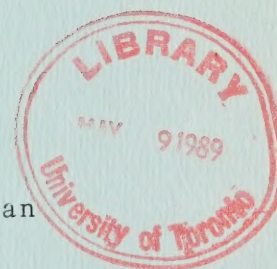
Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 93

DATE: Tuesday, April 25th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman
E. MARTEL, Member
A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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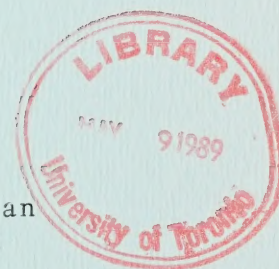


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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, April 25th,
1989, commencing at 9:00 a.m.

VOLUME 93

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
MR. B.R. ARMSTRONG	ANGLERS & HUNTERS
MR. G.L. FIRMAN	
MR. D. HUNTER	NISHNAWBE-ASKI NATION and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
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MR. D. MacDONALD	ONTARIO FEDERATION OF LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. MCKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.) MR. B. BABCOCK)	RED LAKE-EAR FALLS JOINT MUNICIPAL COMMITTEE
MR. D. SCOTT) MR. J.S. TAYLOR)	NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL) MR. S.M. MAKUCH)	GREAT LAKES FOREST
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>DAVID LOWELL EULER,</u>	
<u>PETER PHILLIP HYNARD,</u>	
<u>JOHN TRUMAN ALLIN,</u>	
<u>RICHARD BRUCE GREENWOOD,</u>	
<u>CAMERON D. CLARK,</u>	
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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
517	Report entitled: Moose Management in Ontario, a Report of Open House Public Meetings dated May, 1980.	15666
518	Paper prepared by Mr. Gordon Racy, Mr. John McNicol and Mr. Timmerman entitled: The Application of the Moose and Deer Habitat Guidelines, Impact on Investment.	15677
519	Document entitled: A Method for Assessing the Environmental Sensitivity of Land to Forest Harvesting in Central and Western Newfoundland authored by Van Kesteran.	15743
520	Document entitled: Impacts of Forest Harvesting on Physical Properties of Soils with Reference to Increased Biomass Recovery, A Summary authored by Standish, Commandeur, Smith.	15743
521	Document entitled: Compaction by Forestry Equipment and Effects on Coniferous Seedling Growth on Four Soils in the Alberta Foothills, authored by Corns.	15744
522	Proposed Policy for Controlling the Size of Clearcuts.	15745

1 ---Upon commencing at 9:10 a.m.

2 THE CHAIRMAN: Thank you. Be seated,
3 please.

4 Ladies and gentlemen, just before we
5 commence today's proceedings, I want to indicate to the
6 parties present that the Board is considering the
7 possibility of scheduling a session at one of the
8 communities outside of Thunder Bay possibly some time
9 in September or October of this year.

10 We have decided that perhaps it might be
11 beneficial to include some of those sessions in the
12 outlying communities, these are in one of fourteen or
13 so locations other than Thunder Bay involving
14 essentially those members of the public that are not in
15 attendance on a full-time basis, and rather than leave
16 them entirely to the end of the proceedings; that is,
17 after all of the full-time parties have made their
18 presentations, we feel that we should attempt in some
19 fashion to intersperse some of these visits to the
20 outlying communities throughout the proceedings.

21 There are a couple of reasons for that
22 that the Board feels should be considered, and one of
23 them is that we do not feel that those parties who have
24 not had the opportunity to attend in Thunder Bay for
25 the bulk of the session and presentation of the

1 Ministry's case or anybody else's case that wishes to
2 present in Thunder Bay should necessarily be left to
3 the end of the proceedings.

4 This is a public hearing, we are
5 attempting as much as possible to be accessible to the
6 public and we feel that some of the other people who
7 have an interest in these proceedings should have
8 access to the Board at a time other than just at the
9 end of the entire presentation of the cases of those
10 parties in full-time attendance.

11 Now, in considering where we are going to
12 go, we think that we might schedule this first one for
13 some time in September or October and probably to a
14 community wherein we are advised, as best we can, there
15 won't be a major presentation, there won't be a
16 presentation by parties who have previously indicated
17 that they are going to present evidence at length.

18 There are two or three of the other
19 locations where we do have indications that there is a
20 great deal of interest in these proceedings and we may
21 be there for some time.

22 Now, the reason we are announcing it at
23 this point is because we haven't yet settled on some
24 questions and we may wish to invite parties to address
25 the Board on that. One of the issues in particular

1 that the Board is concerned about is whether or not we
2 will be requiring the Ministry to attend these
3 sessions - they will be there any in event - but to
4 attend these sessions in the company of three or four
5 key witnesss who could be available to respond to
6 questions from the public on matters which have been
7 placed before the Board.

8 And in saying that it would not be the
9 Board's intention to require certainly all of the
10 witnesses to attend that have presented evidence to
11 date on behalf of the Ministry, but we were thinking
12 more of witnesses that might be able to deal with the
13 Ministry's application in a general fashion. And we
14 have indications at this point that the Ministry is
15 opposed to that suggestion and we would like to allow
16 formally the Ministry an opportunity to object to the
17 Board's concerns in this instance as well as hear from
18 other parties.

19 We feel that some of the value of those
20 public sessions, when we were dealing with parties who
21 are not attending on a full-time basis and many of the
22 parties represent local interests, we feel that the
23 value of these public sessions often is so that those
24 people can obtain information about the application as
25 opposed to just making a submission or taking a

1 position on aspects of the application. And it has
2 been the Board's experience, and particularly my
3 personal experience, that some of these public sessions
4 are more valuable to the process if they also combine
5 the opportunity to present and make submissions with
6 the opportunity of being able to question the applicant
7 on certain aspects of the application.

8 Without witnesses present in that
9 instance, the Board can't answer those questions. We
10 are not going to give the evidence nor do we expect
11 counsel for the Ministry or counsel for the other
12 parties to answer questions from the public either and
13 we have found in the past that these sessions are
14 sometimes less than productive if they are solely
15 limited to members of the public making submissions
16 because often what they are requiring is clarification
17 of a Ministry's position or the applicant's position
18 and the questions put are not in the form of a
19 submission.

20 Now, having said that, we would also
21 indicate that these sessions would provide the
22 opportunity for any parties who are not in full-time
23 attendance to make submissions as well. In any event,
24 I think that the Board would like the parties to
25 consider what the Board has indicated today and I think

1 perhaps we might canvass some of these issues some time
2 toward the end of next week.

3 MS. SEABORN: Mr. Chairman, perhaps this
4 issue could be canvassed around the time of May 8th
5 just because that is a date when all parties who are
6 here on a regular basis will be here. At the end of
7 next week I am not sure if someone from Forests for
8 Tomorrow will be here or if someone representing the
9 native groups and other interested people.

10 THE CHAIRMAN: Very well, Ms. Seaborn.
11 Thank you. I think that's a good idea.

12 Certainly this is a matter of a
13 procedural nature as well and that would probably be
14 the best opportunity to canvass it with everybody, but
15 I would ask that you give it some consideration because
16 we would like to see at that point in time how one of
17 these proceedings outside Thunder Bay, from a
18 logistical standpoint, would operate and that would
19 give us a good opportunity and obviously, given the
20 nature of the proceedings and the amount of
21 documentation involved with the proceedings, it might
22 be necessary after this first visit to refine some of
23 methods for when we attend other locations.

24 MR. HANNA: Mr. Chairman, it would help
25 my client in presenting our evidence to the Board if we

1 had an appreciation of how you see the procedures of
2 that session going. What I am thinking of is if a
3 question comes forward that deals with Panel 17, to
4 take an example, and someone comes forth, how are you
5 dealing with alternatives to, and the evidence has not
6 been presented, how would we proceed with those certain
7 questions?

8 THE CHAIRMAN: We haven't a hundred per
9 cent sorted that out in our own minds. I am putting
10 forward at this time, Mr. Hanna, some of the Board's
11 general concerns. I would caution the parties to be
12 fully cognizant of the fact that we have no intention
13 of the Ministry repeating its case at every stop.

14 Right from day one the Ministry has been
15 presenting its case in Thunder Bay, the Ministry is
16 examined in Thunder Bay and all of the other parties
17 have the option of presenting their evidence and being
18 examined and re-examined at one of any of the other
19 locations.

20 Notwithstanding that, we think there
21 should be probably an opportunity for the public at
22 large to be able to ask questions of a general nature
23 of the Ministry, to require some clarification, and it
24 may be answered simply in many cases. And that has
25 happened in the past, we have already dealt with that

1 issue and we will refer you to transcript number such
2 and such where it was dealt with in detail by such and
3 such a witness.

4 Again, I am quite sure there are members
5 of the public there and I would be very surprised if
6 they are, otherwise they are sitting up nightly reading
7 the transcript cover to cover.

8 MR. HANNA: I think that's a fair
9 assessment, Mr. Chairman. The question -- we
10 appreciate fully, we don't want to enter the evidence
11 again every time we go to a community, except by
12 September we will still be in the Ministry's
13 evidence-in-chief.

14 MR. FREIDIN: September.

15 THE CHAIRMAN: September/October.

16 MR. FREIDIN: Yes.

17 THE CHAIRMAN: That's probably a very
18 good likelihood.

19 MR. HANNA: It is a possibility I think.
20 The point simply was I can see questions coming in from
21 the public that might have to deal with evidence that's
22 not yet been --

23 THE CHAIRMAN: In that case it might be
24 answered simply by saying that it has not been dealt
25 with by the Ministry and will be dealt with in Panel 17

1 and stay tuned. You know, it may be as simple as that.

2 We just think perhaps it is unfair for
3 the members of the public at large to have to wait
4 until the entire proceedings are over before we get to
5 them and there are a number of locations to cover and
6 perhaps we should be interspersing some of these as we
7 go along.

8 MR. HANNA: Just for the record I think
9 it is a very good suggestion. I want to make sure that
10 we are all working from sort of a common base. I have
11 no problem with the suggestion.

12 THE CHAIRMAN: Okay. Anyway, we will
13 discuss it in full on May 8th.

14 Is there anything else of a procedural
15 nature before we start?

16 Mr. Hanna?

17 DAVID LOWELL ULER,
18 PETER PHILLIP HYNARD,
19 JOHN TRUMAN ALLIN,
20 RICHARD BRUCE GREENWOOD,
CAMERON D. CLARK,
GORDON C. OLDFORD, Resumed

21 CONTINUED CROSS-EXAMINATION BY MR. HANNA:

22 Q. Dr. Euler, there were a number of
23 things that we left hanging from yesterday and I am
24 going to come to those, but there was some other points
25 that came up in your evidence yesterday that I would

1 just like to deal with first.

2 Now, I believe yesterday you indicated to
3 me that this was your view, that you did not feel that
4 timber management -- non-wildlife objectives should be
5 included in timber management plans; is that correct?

6 DR. EULER: A. Non-wildlife objectives?

7 Q. I'm sorry, I'm speaking too quickly
8 here. Non-timber values -- objectives for non-timber
9 values should not be included in timber management
10 plans and I believe you said yes?

11 A. Yes, that's right.

12 Q. Now, you have read the Ministry of
13 Natural Resources action plan of forest management?

14 A. As a response to the Baskerville
15 Audit you mean?

16 Q. Yes.

17 A. Yes, I have.

18 Q. And you have read the Baskerville
19 Audit and that portion of the Baskerville Audit,
20 Exhibit 16, which deals with non-timber values?

21 A. Yes, I believe I have, yes.

22 Q. And is it your understanding that Dr.
23 Baskerville is recommending that measurable,
24 attainable, quantified objectives be included for
25 non-timber values in a timber management plan?

1 A. I think that's what he recommended.
2 I would have to check that to be sure.

3 Do you have the...?

4 Q. I can speak to one particular
5 sentence that says that, if you will. I think the
6 Board has heard it before.

7 THE CHAIRMAN: Rather than putting it in
8 again, have Dr. Euler -- just refer him to the page and
9 he can see whether he agrees.

10 MR. HANNA: Q. It starts at the bottom
11 of page 73 -- it starts at the bottom of page 73 and
12 carries on to page 74.

13 DR. EULER: A. See, we clearly need
14 measurable, quantitative objectives. The question is
15 whether they go in the timber management plan or they
16 go someplace else. I don't have -- I don't think they
17 need to be in a timber management plan.

18 Q. Dr. Baskerville -- what he says here
19 is he thinks they should be.

20 A. It looks like it. No.

21 Q. Is this your opinion?

22 A. Yes.

23 Q. Is this not the opinion of the
24 Ministry?

25 A. No, not necessarily.

1 Q. So there are other people in the
2 Ministry that disagree with you?

3 A. I don't know that. I am simply
4 giving you my opinion.

5 Q. I appreciate that.

6 MR. FREIDIN: Mr. Chairman, I can
7 indicate that that is the position of the Ministry of
8 Natural Resources as well.

9 THE CHAIRMAN: Very well. You have
10 support, Dr. Euler.

11 MR. HANNA: Q. Dr. Euler, can you tell
12 me where in a public statement the Ministry has
13 indicated that it is not in agreement with this
14 recommendation of Dr. Baskerville?

15 DR. EULER: A. No, I can't.

16 Q. Thank you. Dr. Euler, it is with
17 considerable trepidation that I return to the issue of
18 moose objectives and habitat, and I take the Board's
19 direction that if we try and deal with something that
20 was already dealt with in your evidence-in-chief we
21 will get into a quagmire today.

22 What I understood you to say was that we
23 could not reach the moose -- provincial moose objective
24 through hunting controls alone; is that correct?

25 A. In my opinion that is correct, yes.

1 Q. I was one of the weird members of the
2 public who was reading last night the transcripts until
3 the wee hours and I was also reading your paper
4 regarding -- the end of 308, that you wrote with Dr.
5 Thompson. You are familiar with that paper?

6 A. Yes. Another well-written paper.

7 Q. I only refer to well-written papers,
8 Dr. Euler.

9 A. Thank you very much.

10 THE CHAIRMAN: I hope you got more than
11 80 on it.

12 DR. EULER: Yes, as a matter of fact we
13 did.

14 MR. HANNA: I wish I got 80. I must
15 admit, I have a chronic problem with...

16 Q. All right. At the bottom of page
17 19 -- excuse me. We are looking in the guidelines
18 themselves, it is the page number -- this is the Moose
19 Habitat Guidelines, Exhibit 310.

20 DR. EULER: A. This paper was actually
21 published in an international symposium on moose
22 management and this is the same paper, as put here, as
23 was in that international symposium.

24 Q. Okay. I believe at the bottom of
25 page 19 in the second column, that last paragraph, it

1 continues over to the next page, it deals with the
2 Chapleau Game Reserve; is that correct?

3 A. Yes.

4 Q. And I believe the moose densities
5 that were indicated in that reserve were in the order
6 of .3 to .35 moose per square kilometre?

7 A. That's correct, .35, yes.

8 Q. This density is considerably above
9 the statement that was used for the provincial moose
10 objective; is that correct?

11 A. No, it is the same figure.

12 Q. It is the same figure?

13 A. Mm-hmm.

14 Q. Perhaps you can correct my math then,
15 Dr. Euler. I calculate the moose density as 2.26 moose
16 per square kilometre?

17 A. No, we didn't use the 26.

18 Q. Perhaps you could do this calculation
19 for me, could you: Six hundred thousand -- 160 by
20 600,000, please. I believe we have got -- I am looking
21 here right at your numbers, there are 600,000 hectares
22 of moose habitat in the province; is that correct?

23 A. No. Shall I read what it says here.

24 "From the 600,000 square kilometers of
25 moose range available, using a figure on

1 the low side of non-capacity to carry
2 moose, we expect a moose potential of at
3 least 600,000 times 0.3 which is equal to
4 180 moose."

5 Q. I understand that. The number you
6 ended up with is 160?

7 A. We explained that in the second
8 sentence.

9 Q. I read the explanation. The density
10 that you assumed was .26 moose per square kilometre; is
11 that not correct?

12 A. Yes.

13 Q. Thank you.

14 THE CHAIRMAN: You are saying essentially
15 that the land area could support another two thousand
16 moose?

17 DR. EULER: Yes, and see part of coming
18 up with 160 is this tradeoff between social and
19 biological and economic and all of these things. The
20 the final number is a combination of a lot of different
21 pressures on us other than just the biological capacity
22 of the land.

23 Now, in fact, research done since this
24 would suggest we can carry biologically a lot more than
25 160.

1 MR. HANNA: Q. Dr. Euler, I believe in
2 describing the Chapleau Game Reserve you made reference
3 to the large size of clearcuts in that area?

4 DR. EULER: A. Yes.

5 Q. In fact you referenced clearcuts up
6 to 4,000 hectares being common in the area?

7 A. That's right.

8 Q. Would 4,000 hectare clearcuts be what
9 would be expected under the guidelines?

10 A. No.

11 Q. Then it seems to me that we could
12 achieve the moose target across the province, given
13 that we can have these size of clearcuts, without
14 habitat regulation simply through hunter control
15 because I gather that's the difference between the
16 Chapleau Game Reserve and the rest of the province?

17 A. I don't think that conclusion
18 follows. It is a very vast province, not all of the
19 habitat is equal to the Chapleau Game Reserve, there
20 are many differences across the province.

21 We picked Chapleau because it was a good
22 example of a place where we could -- we knew something
23 about potential. It was one of the few examples where
24 we had real numbers and so we used that as a guide but,
25 in my opinion, we couldn't do that everywhere.

1 The second factor is the Chapleau Crown
2 Game Reserve is special in that a 4,000 acre
3 clearcut -- or hectare clearcut is not simply an area
4 that is level of trees. In that case they were called
5 clearcuts because all of the merchantable timber has
6 been removed, but in fact there was a lot of residual,
7 a lot of the topography has actually produced good
8 moose habitat even though technically the clearcut was
9 very large.

10 One of the difficult problems in the
11 whole issue of clearcut and clearcut size is, it simply
12 is not something that is productive to concentrate on
13 because they are so different.

14 Q. Well, we may differ about what is
15 productive to concentrate on, but we will come to that
16 in a moment. The Exhibit 482 I believe that you have
17 behind you there, is your hand-drawn sketch of the
18 moose densities -- ideal moose habitat.

19 A. Yes, that's ideal moose habitat,
20 that's right.

21 Q. I believe you estimated that we could
22 have up to 2 moose per square kilometre with that
23 habitat?

24 A. Well, this is from some more recent
25 research.

1 Q. Dr. Euler, I don't want to interrupt.
2 I do have written transcripts and I do appreciate that
3 this is how this was developed. I simply want to know
4 whether that is what that diagram is?

5 A. Yes, yes. That wasn't my figure
6 though, that is the researcher's figure.

7 Q. Again I believe you have indicated
8 that in your evidence. So if we repeat the calculation
9 that you indicated on page 20 there, we would end up
10 with 1.2-million animals approximately in the province
11 if we were able to achieve that density; is that
12 correct?

13 A. I will accept that your math is
14 correct.

15 MR. HANNA: It was done late at night,
16 Mr. Chairman, but I checked it. I didn't bring my
17 calculator, but it's in that order.

18 DR. EULER: I haven't done it..

19 MR. HANNA: Q. So back to your comment
20 earlier, you've made the comment that there was a lot
21 of tradeoffs required in reaching this and I certainly
22 appreciate that, and I think the Ministry is always
23 faced with those sort of tradeoffs and, in this
24 particular, in fact what we have traded off is about a
25 little over 1-million moose?

1 A. Well, no, I don't think so, no. You
2 see -- no, it isn't that simple. You just can't reduce
3 the natural world to these kind of numbers and the
4 entire area of 600,000 square kilometres would not have
5 the potential to produce 2 moose per square mile.

6 Q. Even if that was our intention?

7 A. Yes. That is just unrealistic. That
8 is just using numbers in a way that has no relevance to
9 reality.

10 Q. Well, what would be the real number?

11 A. Well, I haven't sat down and thought
12 about it, but it would be less than this whatever
13 million moose that you came up with.

14 Q. So you have made the tradeoff without
15 knowing what you are trading off.

16 A. I don't think that is true at all.

17 Q. Then what did you trade off?

18 A. We traded off cost to the lumber
19 industry.

20 Q. How many moose did you trade off, Dr.
21 Euler, please?

22 A. Well, we did not put that kind of
23 numbers to it. That would be foolish.

24 Q. Dr. Euler, I would like to refer you
25 to a paper that you wrote, I believe it was written in

1 1975, and it's called the Economic Impact of Prescribed
2 Burning on Moose Hunting. Are you familiar with that
3 paper?

4 A. It is another one in a series of
5 well-written paper.

6 Q. I only refer to the well-written
7 papers, Dr. Euler. I believe you estimated at that
8 time that the monetary value of a moose was in the
9 order of \$1,130; is that correct?

10 A. Probably. I haven't read that paper
11 for a little while, but I will accept that.

12 Q. So if we were to take the
13 hypothetical that we had traded off 1-million moose, I
14 calculated that we would have traded off about
15 \$188-million in 1975 dollars in favour of timber
16 management, timber harvesting according to your
17 numbers.

18 A. Well, I just don't accept that. That
19 is just playing with numbers and it just is
20 unrealistic.

21 Q. So you didn't do these numbers. You
22 can't give me the right numbers?

23 A. Well, it's just foolish. It's just
24 playing silly games to do this and I am not willing to
25 do that.

1 Q. So it's silly games to tell the
2 public what is being traded off? R.

3 A. No, it is not, but it's silly to tell
4 them things that you have no idea whether they are true
5 or not.

6 Q. Have I missed -- if I was a member of
7 the public and I had seen Exhibit 482 and I had read
8 your paper and I had read the moose guidelines and if I
9 made something that some of the public might possibly
10 come to that conclusion?

11 A. Well, I don't know what the public
12 would come to conclusion.

13 Q. Thank you. Dr. Euler, you were going
14 to give me the status report date for the
15 red-shouldered hawk. Have you done that?

16 A. April, 1983.

17 Q. Now, I believe we were going
18 through -- excuse me, you were going to go through the
19 specific guidelines and the general guidelines and
20 provide us with a brief summary of where they differ.

21 I think we should be careful here. I
22 don't really want to go through this in minute detail,
23 just if you can just tell us the highlights of the
24 major differences?

25 A. Well, as I think we discussed

1 yesterday, the general guidelines on page (i) are just
2 generalizations designed to be helpful to the reader as
3 he tries to understand what good moose habitat is.

4 Now, on page 2 we try to get into some --
5 a little more detail of, oh, exceptions and concentrate
6 on specific areas of concern. So for example, 1(a)
7 is -- we address the issue of access roads which were
8 not addressed in the previous page. 1(b) we talk about
9 special circumstances to reduce hunting pressure.

10 Now, under -- and that wasn't covered in
11 the previous page. Under 2(a), that first phrase is
12 really the same as in the previous page. It is
13 intended just to remind the reader of the general
14 principles, the general guidelines but then (b) and (c)
15 talks about selection harvesting and so on which wasn't
16 referred to either. That is early winter concentration
17 areas are a little less dense than later winter
18 concentration areas and you can do some selection
19 harvesting in there.

20 And so it just points out, it reminds the
21 reader that that can happen. And then on 2(c) it talks
22 about shelter patches can be cut when adjacent
23 vegetation has reached two metres in height. And that
24 wasn't in the previous section either, so again it just
25 adds more to the reader.

1 Q. So I just want to clarify that. So
2 basically in 2(c) we are saying the only difference
3 between that and the general guidelines is it provides
4 a measure of when you can have your return cut?

5 A. That's correct, yes.

6 Q. Thank you.

7 A. Now, in (d) that first sentence is
8 the same as in the general guidelines where it says:

9 "In late winter concentration areas cut
10 should not exceed 400 metres in width."

11 But then the next sentence is a new
12 sentence and it adds a point that uncut areas should be
13 equal in size to cut areas. See, that is a new concept
14 that wasn't in the general guidelines. And then there
15 is a guidance as to when remaining shelter patches may
16 be cut.

17 Now, (e) --

18 Q. Now, that last sentence again was
19 something that wasn't in the general guidelines?

20 A. That's right.

21 Q. That again refers to the return cut?

22 A. That's right, yes. Now -- so that
23 gives more information.

24 Now, (e) is new in that -- the reserve
25 concept wasn't new because we talked about reserves in

1 a sort of general way, but we talk a little bit more
2 about giving just a little more guidance as to the size
3 of the reserve.

4 And then 3 and 4 talk about potential
5 impact of site preparation which again had been just
6 touched on on the previous page, but there is more
7 information. For example, it gives them some
8 suggestion about prescribed burning and so on.

9 Q. 3, 4 and 5 are basically new things
10 to the --

11 A. Basically they are new, yes.

12 Q. I didn't see the reference to 3 on
13 page (i). Can you tell me where that is? You said
14 there is some general reference. I didn't see that.

15 A. Okay. Let me just see if I can find
16 that. Well, I guess I was just including that under
17 (d) as (d) on page 5 is just a very, very general
18 statement that talks about selection harvesting and I
19 had thought that that concept was in 3 in a very
20 general way.

21 Q. Well, I certainly agree with you it
22 is very general.

23 A. Yeah. It is also -- remember these
24 are just summaries and the detailed explanation are
25 back in the document. So what we hope, of course,

1 would happen is that people would read that very brief
2 summary but actually would dig into the pages that
3 follow for a more comprehensive understanding.

4 MR. HANNA: All right. We will just
5 finish going through this clause by clause, if I could
6 just finish the 3 to 5, then we will be finished that,
7 we certainly ended up half way I think, Mr. Chairman,
8 last time with it.

9 THE CHAIRMAN: Very well.

10 MR. HANNA: Q. Dr. Euler looking at
11 condition 3 in the specific areas of concern on page
12 (ii).

13 DR. EULER: A. Yes.

14 Q. What tools are available to district
15 biologists to assess the potential impacts of site
16 preparation, regeneration, and maintenance treatments
17 as required in condition 3?

18 A. Didn't we do this yesterday?

19 Q. No, we didn't. I have talked about
20 tools all the way through, that is a fair -- certainly,
21 that is my question and I am asking it with each
22 condition. I presume with each one we have got a
23 different set of, let's say, impacts we are considering
24 and I am interested to hear the tools that you have to
25 deal with that.

1 A. Well, the basic tool is your friendly
2 forester who will tell you as the district person
3 exactly what they are going to do because that is what
4 you need to know, is what exactly is going to happen in
5 site prep, regen and maintenance treatments.

6 Now, once you know exactly what is going
7 to happen, then you can evaluate its impact on the
8 moose habitat that is there.

9 Q. So then the biologist can say: Well,
10 this is going to affect the quality and quantity in
11 very specific ways. He can come to the forester and
12 say: This is going to affect the quality and quantity
13 of moose habitat in this way and, therefore, we haven't
14 got adequate supply of that, we need more.

15 A. That is very possible, yes. Or he
16 might say we have enough, we don't need any more. He
17 makes an evaluation.

18 Q. I would like to go back just to 2(d)
19 just for a moment and just one question I did not ask
20 you there and that is: What constitutes an existing
21 late winter concentration area; how many moose have to
22 be present? How does the Ministry decide that that is
23 a late winter concentration area?

24 A. The most common way that we decide it
25 is a late winter concentration area is that see moose

1 there repeatedly in the late winter time from aerial
2 surveys or observations on the ground, we find that
3 repeatedly moose are there.

4 There is no particular rule that says how
5 many moose must be there, it is a judgment left to the
6 professional on site.

7 Q. So if I saw ten moose once or one
8 moose ten times, that both could be a late winter
9 concentration area?

10 A. It is possible. We leave that to the
11 judgment of the professional on the site.

12 Q. And he then has to justify that to
13 his forestry colleagues?

14 A. Yes, he does.

15 Q. So it is fair to say that this
16 particular condition places -- well, a number of the
17 conditions, in fact virtually all of the conditions in
18 the guidelines places the onus of proof on the
19 biologist?

20 A. Yes. The biologist should be able to
21 go to the forester and tell the forester what is needed
22 in that area to help achieve the objectives.

23 MR. GREENWOOD: A. Mr. Hanna, you are
24 describing a situation again in a theoretical sense and
25 having worked in the field I don't think that it is

1 completely accurate.

2 You are suggesting that there is
3 justification between two camps and that those camps
4 are separate and yet, in the actual world for instance,
5 I was trained to fly moose survey and would help out
6 with that survey and yet I was a forester.

7 So it wasn't necessarily the wildlife
8 biologist justifying to me what a winter concentration
9 area particularly if it was on a plot that I had flown
10 on my own unit and saw that for myself.

11 Q. So, Mr. Greenwood, would you say then
12 a late winter concentration area is when you see ten
13 moose or one moose ten times?

14 A. Well, again, I was involved with the
15 survey and I would leave that judgment to the wildlife
16 bio who was working that data up, but if that wildlife
17 bio came to me based on data that I had helped to
18 collect, it may not be surprising to me at all that he
19 is suggesting this area is a late winter concentration
20 area.

21 Q. Mr. Mr. Greenwood, how many company
22 foresters fly moose surveys?

23 A. At that point in time, I am not aware
24 of any.

25 Q. Thank you. Condition 4, Dr. Euler.

1 Does this essentially provide a hierarchy of preferred
2 site preparation techniques?

3 DR. EULER: A. No, it -- although we do
4 say later that we prefer prescribed burning wherever
5 possible, but in this case it wasn't intended to do
6 that.

7 Q. So you are not saying then that the
8 words mean what they mean? And I read it -- I am just
9 trying to read the words and interpret them and it
10 says:

11 "The preferred site preparation method is
12 prescribed burning."

13 A. Yes, it is, but I don't think
14 necessarily think the is preferred over chemical.

15 Q. I'm sorry?

16 A. I just don't think (b) is preferred
17 over (c) necessarily. It might be in some cases, and
18 it might not be in other indications.

19 Q. So (a) is preferred to (b) and (c),
20 and (b) and (c) are interchangeable?

21 A. Yes.

22 Q. 4(c). Who would be responsible for
23 demonstrating that available browse was inadequate and
24 chemical treatment should not be permitted?

25 A. The biologist.

1 Q. Now, you would agree that there is a
2 tradeoff to be made there in some occasions?

3 A. Yes in -- yes, there is.

4 Q. So in the process of where this
5 decision would take place, the biologist would come in
6 and, if you will, if we can imagine that blind statue
7 with the two -- with the balance in their hands, put
8 his whatever evidence on one side and the forester
9 would put his evidence on the other and you would watch
10 and see which way the balance went?

11 I'm just trying to think how the process
12 works. I'm not being facetious, I'm trying to figure
13 out how this process would take place.

14 A. Well, very often the biologist and
15 the forester sit down and talk or they go out in the
16 field and they talk and they discuss the pros and cons
17 of the various operations that are available and they
18 come to an agreement about how best to deal with that
19 particular area.

20 Q. What language does the unit forester
21 speak in and, particularly, a company forester?

22 A. I am tempted to say English.

23 Q. But would you not say that, if you
24 will, a major measure that he uses is the dollar loss
25 in terms of the timber production?

1 A. The company forester?

2 Q. Exactly.

3 A. Oh, of course.

4 Q. And what are the units that the
5 biologist speaks in?

6 A. The biologist is thinking about the
7 objectives that he's trying to achieve which, in the
8 case we are considering, would be moose.

9 Q. But would you not agree with me - and
10 I believe actually you have already shown that in some
11 of your slides, and I believe Ms. Koven spoke to you
12 about this matter - that you can achieve the objectives
13 in part of the area and not have to do it on the whole
14 area?

15 A. Yes.

16 Q. You are faced with this problem of
17 having to decide where I am going to have it occur?

18 A. Yes indeed. That is the biologist's
19 problem particularly.

20 Q. Yes, particularly. But he also has
21 to convince the forester why he needs it on this
22 particular site.

23 A. That's right. That's right.

24 Q. And because the wildlife management
25 unit boundaries overlap the timber management unit

1 boundaries, there is the potential that I could, if I
2 didn't like one of the timber management companies and
3 I liked the other one, achieve my objectives through
4 the one company and, as I say, favour my other company?

5 A. Well, although that potential is
6 there, it is very unlikely, very unlikely. Normally
7 this is -- that issue is a very minor issue in these
8 discussions. The biologist is most concerned about
9 meeting the objectives.

10 THE CHAIRMAN: In the event of a
11 disagreement; you have your little chat, you can't
12 agree, the option is always open for you to then go to
13 the district manager?

14 DR. EULER: Oh yes, mm-hmm.

15 THE CHAIRMAN: And I take it the same
16 option is open to the company forester--

17 DR. EULER: Yes.

18 THE CHAIRMAN: --to appeal to the
19 district manager--

20 DR. EULER: Yes.

21 THE CHAIRMAN: --to put their case to
22 him.

23 DR. EULER: That's right.

24 THE CHAIRMAN: And he would settle any
25 dispute; is that right?

1 DR. EULER: That's right. That's right.
2 And the district manager is chosen as a person to have
3 this broad overview and to arbitrate these kinds of
4 difficulties that can't be sorted out by the two people
5 in the program areas. That's right.

6 THE CHAIRMAN: And the Ministry retains
7 overall control as to the approval of the plan--

8 DR. EULER: That's right.

9 THE CHAIRMAN: --in any event?

10 DR. EULER: That's right. The first step
11 is the district manager agrees to it, and if the
12 district manager, for example, has a problem then there
13 is yet another level to look at what the district
14 manager did and there is a level beyond that. So there
15 is -- a lot of eyes are peering in this document.

16 THE CHAIRMAN: Right. If the biologist
17 lost the battle between having his views sustained by
18 the district manager but really didn't feel like losing
19 the war, would he have access to go higher than the
20 district manager? Or would he pretty well be limited
21 to accepting the views of the district manager?

22 DR. EULER: Well, shall I pass this to
23 the district manager that was here. Cam was a district
24 manager and I have never been a district manager.

25 Why don't we see what he would say about

1 that, if you wouldn't mind, Mr. Chairman.

2 THE CHAIRMAN: (nodding affirmatively)

3 MR. CLARK: I would say that in practical
4 terms the district manager would have ultimate
5 responsibility to make the decision in that sense that
6 the biologist would have gone as far as he could go.

7 Now, I would want to qualify that by
8 saying a good district manager I don't think would put
9 his biologist in the position of feeling that he had no
10 recourse. And I think it is important to refer back to
11 Panel 8 where we talked about the decision-making
12 process because as a district manager I would try and
13 avoid that situation by, first of all, if I recognized
14 that there was a significant issue, that there was
15 considerable controversy or emotion attached to the
16 decision, my normal recourse, for example, would be
17 initially to go to the region and seek advice.

18 So that if there were concerns that were
19 registered by my wildlife biologist, I think a logical
20 thing for me to do initially in order for me to satisfy
21 myself that we were dealing with this correctly, would
22 be to go to the region and consult with the regional
23 specialist.

24 If I was still unsatisfied or still felt
25 that I needed more assistance and I wanted to ensure

1 that at least in my own mind we dealt with this issue
2 fairly, I had access to outside experts. And there is
3 no doubt that in certain instances we might want to
4 consult with other people.

5 We mentioned pre-existing obligations.
6 There is a host of things that if you are being a good
7 district manager I think help to alleviate those kinds
8 of problems and avoid that kind of situation where the
9 biologist at the district level feels fenced in and
10 unable to function as a professional.

11 THE CHAIRMAN: And I would take it, Mr.
12 Clark, that the public is not in any way limited by the
13 hierarchy?

14 MR. CLARK: Not at all.

15 THE CHAIRMAN: If the public felt that
16 they weren't getting appropriate responses from the
17 regional biologist, the district manager or even the
18 region, they could go and raise it with whomever they
19 like right up to the Ministry?

20 MR. CLARK: Well, that's certainly the
21 case. And I think I pointed out in an earlier panel
22 when we were talking about the whole issue of
23 accountability, is that as a decision-maker that was
24 certainly one of the things I was mindful of.

25 Quite aside from any sort of legal

1 obligation to make the right decision, people were
2 watching the decisions I made and if they were not
3 satisfied with them I can assure you that they didn't
4 hesitate to go elsewhere and that left me in the
5 position of having to be able to justify and document
6 the decision that I had made or the position we had
7 taken at the district.

8 THE CHAIRMAN: Thank you.

9 MRS. KOVEN: Mr. Clark, are you saying
10 that as a district manager you would bend over
11 backwards to accommodate the biologist's concern for
12 wildlife?

13 MR. CLARK: No -- well, absolutely, I
14 would bend over backwards to accommodate the concerns
15 of my staff and if, for example - you know, we are
16 dealing in a hypothetical here - I had a couple of
17 staff members who had reached an impasse in terms of
18 being able to resolve a problem, then it was my job to
19 sort of facilitate the resolution of that issue.

20 And I would certainly bend over backwards
21 to ensure that we got the facts on the table as best we
22 could. So that when a decision was ultimately made all
23 parties had an understanding of the basis on which that
24 decision was made.

25 I wasn't suggesting I wouldn't

1 necessarily bend in one direction more than another
2 except that I do know that if you want to have
3 credibility with your staff as a district manager you
4 have to demonstrate that ability to listen and be fair,
5 and the way I think you do that is making sure that you
6 take the time to get the right information. And one of
7 the sort of pressure valves in the system, I think, was
8 to be able to go to the region and get a second opinion
9 on both sides of the issue, if that was necessary.

10 MR. HANNA: Q. Mr. Clark, are you aware
11 of pressure by the forest industry to try and reduce
12 the uncertainty in these sort of decisions and to try
13 to use a common measure so that these decisions can be
14 made with less negotiation and more efficiently?

15 MR. CLARK: A. Could you -- I am not
16 sure I would use those words. I would certainly say I
17 am aware of the concern that the industry has that the
18 tools be used -- be understood and be used
19 appropriately.

20 Q. Well, maybe I can put it another way.
21 With Mr. Hynard's decision model, which only dealt with
22 silvicultural concerns and was not broad based, but if
23 we are able to develop that type of thing which laid
24 out explicitly the tradeoffs and we were able to deal
25 them once and for all, would that not reduce a lot of,

1 if you will, going over the hill?

2 A. Well, it is very hard for me to
3 respond in a general way. I think my answer would be
4 that in making decisions we try -- and dealing with
5 these kinds of issues, we try to be as explicit as we
6 can. So that in that sense we are attempting to move
7 in that direction, but I don't think that the world we
8 work in out there is necessarily so tidy that we can do
9 it in the way that I sense you are suggesting.

10 MR. HANNA: I hope we have time because I
11 have a number of questions I would like to pursue with
12 you on that matter, but I would like to put that off
13 until later if we could, Mr. Chairman.

14 Q. Dr. Euler, I would like to look at
15 5(a) and 5(b). These appear to be the only conditions
16 that I have encountered so far in the guidelines where
17 reference is made not only to current conditions but
18 also future conditions; is that correct?

19 DR. EULER: A. Well, later on in the
20 text of the guidelines there will be more discussion of
21 those issues, but that's the only place in the summary,
22 yes.

23 Q. So in this particular instance the
24 biologist is being directed to look to the future when
25 he is making a decision, not only what the current

1 habitat looks like?

2 A. That's correct.

3 Q. Is there reason that sort of forward
4 looking type of direction was not given in any of the
5 other guidelines?

6 A. Well, it is given later in the text.

7 Q. I appreciate that. I'm saying --

8 A. And so it wasn't considered to be
9 necessary here in the summary.

10 Q. What tools do biologists use to
11 examine the long-term consequences of silvicultural
12 prescriptions they recommend to foresters?

13 A. There is no specific item that we can
14 call a tool that they use. They use professional
15 judgment, they use all their knowledge of moose biology
16 and moose habitat, and they make an evaluation of what
17 has happened.

18 Q. So they synthesize within their head;
19 is that fair to say?

20 A. Or on paper, yes.

21 Q. On paper?

22 A. Sometimes. It depends on the
23 biologist, it depends on the circumstance. It can be
24 either.

25 Q. So we could do it on paper if we felt

1 it was necessary?

2 A. Yes.

3 Q. Is it your experience that biologists
4 make use of models such as OWOSFOP in these
5 circumstances?

6 A. Sometimes they do, yes. It's not --
7 I would not say it was frequent though. Mostly in
8 these cir -- most of time in these circumstances they
9 would not use a computer model such as OWOSFOP.

10 Q. Now, is it fair to say that foresters
11 in many cases are dealing with perhaps four or five
12 species of trees?

13 A. Yes, I would say that's fair.

14 Q. Right. Mr. Greenwood? I'm talking
15 about boreal forest here, Mr. Greenwood, perhaps you
16 can confirm that.

17 MR. GREENWOOD: A. I think that's a fair
18 number. Most of the time it would be four or five.

19 Q. And I believe, Dr. Euler, you've said
20 that the biologist is trying to deal with 309
21 vertebrate species or, not including all the other
22 flora and fauna that he might have on his agenda?

23 DR. EULER: A. There would be a large
24 number, yes.

25 Q. Well, what's perplexing me in this is

1 that we've heard how the foresters use all these tools
2 to deal with the complexity of the forest and I have
3 read these guidelines and I see this huge burden placed
4 on a district biologist to try to pull all the pieces
5 together and I am just wondering: How come they can do
6 this if in their head across a whole variety of
7 biologists that we have this province and the districts
8 and yet MNR can't put it forward on a piece of paper?

9 A. We are concerned about this problem
10 and have been for some time and that's why we have
11 adopted the featured species approach, because of all
12 the approaches that are available to us as managers it
13 strikes us that the featured species is an approach
14 that will best deal with this very difficult complexity
15 and, in adopting it, we have reduced this burden to
16 something that is manageable by the practitioner in the
17 field.

18 Q. So it is fair to say then that there
19 is less to consider in managing wildlife than there is
20 in forestry, because the foresters have a limited
21 number of, if you will, featured species that they are
22 dealing with and yet they still have these complex
23 tools?

24 A. Well, I don't know whether it is more
25 or less complex. I just don't know. I am concerned

1 with what the biologist does in making the biologist
2 burden manageable. Sure it is a heavy burden, it is a
3 tough, tough job but I think it is manageable.

4 Q. Would you not agree that if you could
5 approve the consistency and the reliability -- excuse
6 me, can I start that again.

7 Would you not agree that it would improve
8 the consistency and the reliability of the guidelines
9 if these relationships could be explicitly laid out?

10 A. Which relationships are you talking
11 about?

12 Q. Do we have to go back through the
13 guidelines and describe all of the discretion and
14 decisions that biologists have to make in the field?

15 A. Well, I'm sorry, I just simply don't
16 understand your question.

17 THE CHAIRMAN: Well, without going back
18 through all of the detail again, do you want to put
19 your question perhaps in another way.

20 MR. HANNA: Q. The biologist is faced
21 with numerous of the conditions in the guidelines with
22 assessing the impacts on quality and quantity of
23 habitat and subsequently on moose populations?

24 DR. EULER: A. Yes.

25 Q. If we were able to put those

1 relationships explicitly out on a piece of paper, would
2 that improve the consistency and reliability of the
3 guidelines?

4 A. Well, I am not sure that it would.
5 If the natural world is a very, very, varied situation,
6 the guidelines are merely a tool to help achieve on
7 objective and I think it is really misplacing the
8 emphasis to search for how the biologist implements the
9 guidelines.

10 The key question is: How are the moose
11 doing, how are the other creatures out there doing.
12 That's what we are really concerned about. And the
13 guidelines are merely a tool and we don't want to get
14 so concerned with the guidelines that we forget why we
15 are here which is to manage moose and produce
16 populations of moose and keep the other wildlife
17 populations healthy.

18 Q. Back to my question: Was that a no?

19 A. Yes.

20 Q. Perhaps I have misunderstood the
21 training message then introduced as Exhibit 492 into
22 this hearing, but it is my understanding that that
23 training message is an attempt to reduce the
24 flexibility and make the guidelines more consistent.
25 If you will, put on paper some of the discretion that

1 is in the guidelines; is that not correct?

2 A. The training message, yes, is to
3 reduce some of the boundaries that biologists have been
4 working within. The guidelines as they are constructed
5 mean the boundaries were very, very wide. Now, the
6 Ministry has decided that those boundaries were a
7 little too wide and they have been reduced somewhat.

8 Q. And is not the reason it was so wide
9 because it wasn't explicitly laid out how you should go
10 about applying these guidelines, there was so much
11 discretion in them?

12 A. Yes, and some unacceptable
13 inconsistencies had arisen in a few places. Yes,
14 that's correct.

15 Q. Do you feel that the training message
16 that's been introduced will help reduce friction
17 between biologists and foresters because it will more
18 clearly define what is intended in the guidelines?

19 A. I hope so. I'm just not sure if it
20 will, but I hope so,, that's why we have -- that's an
21 important concern of ours and we want it to happen.

22 Q. Would you say that our understanding
23 of moose habitat relationships is much better than for
24 many other species for which MNR has prepared
25 guidelines?

1 A. Yes, I think so.

2 MR. HANNA: Mr. Chairman, obviously we
3 don't have time to go through all the guidelines here.

4 Q. How many guidelines have been
5 introduced -- wildlife guidelines have been introduced
6 recently, Dr. Euler?

7 DR. EULER: A. I think it is 27. I'm
8 really not sure though. I just don't keep these
9 numbers in my head.

10 Q. 27 is good. 27 plus or minus 3 or
11 something; is that correct?

12 A. That's right.

13 MR. FREIDIN: I think the guidelines are
14 listed in a NAN interrogatory which was filed in this
15 panel.

16 MR. HANNA: Q. There is a large number?

17 DR. EULER: A. Yes.

18 Q. Would you agree with me that they
19 require as much or more discretion and interpretation
20 as required in the moose guidelines?

21 A. Yes.

22 MR. HANNA: Mr. Chairman, there is some
23 technical difficulty here. We don't have photocopying
24 anymore, at least this week, on this floor and we have
25 had some problems getting photocopies and whatever. I

1 want to refer to an exhibit that the Federation had
2 introduced during Dr. McNamee's testimony which was the
3 draft of the ESSA Report.

4 THE CHAIRMAN: Was that admitted as an
5 exhibit?

6 MR. HANNA: Yes, it was I believe. I
7 believe Mr. Mander has made it available to the Board.

8 MR. FREIDIN: What was the exhibit
9 number? Mr. Chairman, we don't have the exhibit.

10 THE CHAIRMAN: I think it is 407. A
11 Draft Report: Effects Monitoring for Timber Management
12 Guidelines in Ontario. Is that the exhibit, 407?

13 MR. HANNA: Yes. Mr. Chairman, I just
14 want to read something out of it. I am just trying to
15 think of an efficient way to do this. We can break if
16 you want to or I'm happy to do it.

17 THE CHAIRMAN: Well, are you just going
18 to be reading a short passage?

19 MR. HANNA: Yes.

20 THE CHAIRMAN: Well, why don't you just
21 read the passage into the record. You can use this
22 one. (handed)

23 MR. HANNA: Thanks.

24 MR. FREIDIN: Do you have a copy for the
25 witness?

1 THE CHAIRMAN: Now, where would you be
2 able to get a - (have you got another copy) - all
3 right, here is a copy for the witness. Let's try and
4 proceed this way. If it becomes necessary to adjourn
5 to photocopy it, we will do that.

6 MR. HANNA: Q. Dr. Euler, the reason I
7 have given you this exhibit, I believe some of the
8 conclusions are contained in the Exhibit 381 it's just
9 a little more explicitly laid out here, so I thought it
10 would be easier to refer to Exhibit 407.

11 And I would refer you to page 209, if I
12 could, under Section 4.1.3 stringency.

13 DR. EULER: A. Yes.

14 Q. I will read it into the record,
15 seeing that other parties don't have it here, it might
16 help them. It says:

17 "The level of stringency..."

18 And that's defined earlier in the
19 exhibit:

20 "...of the timber management guidelines
21 intended to protect or mitigate potential
22 effects as significant was uncertain in
23 every case. In other words, it is not
24 known whether the timber management
25 guidelines offer too little resource

1 protect or mitigation of timber
2 management effects or if the same level
3 of resource protection or mitigation of
4 timber management effects could be
5 achieved with less rigorous guidelines."

6 Do you agree with this conclusion?

7 A. Well, I think I agree with it in a
8 general way. There may be some specific -- a lot of it
9 depends on what you mean by some of those words. For
10 example, less rigorous is difficult to define. However
11 in a general sort of way, yes, I would agree with it.

12 Q. And this conclusion pertains only to
13 three of the guidelines, the three provincial
14 guidelines; is that correct?

15 A. Yes.

16 Q. Would you say that this conclusion
17 would be unreasonable to expect with the 27 odd other
18 guidelines that we have?

19 A. No, it would not be unreasonable.

20 Q. Could you plain to me then, in your
21 view, how you reconcile that conclusion with the
22 statement Mr. Freidin made -- excuse me -- Mr. Freidin
23 made at the outset of this panel that harvesting causes
24 no significant adverse impacts?

25 A. By looking at how well we are

1 attaining our objectives, that's how you reconcile it.
2 We must be something right if that moose population is
3 growing. Somehow in this maze of uncertainty that we
4 are faced with every day, we must be doing something
5 right.

6 Q. Like controlling hunters?

7 A. Yes, that's part of it.

8 MR. HANNA: Mr. Chairman, I don't want to
9 go into the quagmire again, but I think we are at the
10 brink of it. I will have to step back from it.

11 THE CHAIRMAN: Well, you can raise in
12 your own case--

13 MR. HANNA: Yes, sir.

14 THE CHAIRMAN: --whatever conclusions you
15 want to put forward on that. If you believe that are
16 other ways to affect wildlife management other than by
17 controlling hunters, put it forward during your own
18 case.

19 MR. HANNA: Mr. Chairman just to be clear
20 that wasn't my -- that wasn't the thrust of what I am
21 saying. It is more a matter of how you measure
22 acceptability and whether you are proceeding along the
23 lines, but I don't want to go back into that. I think
24 it's easier to clarify that in evidence-in-chief.

25 THE CHAIRMAN: Okay.

1 MR. HANNA: Q. Dr. Euler, you would
2 agree with me though that there is a risk of impacts
3 occurring?

4 DR. EULER: A. Everything we do has a
5 risk. We just don't have knowledge, complete utter
6 knowledge of everything we do. We take risks every
7 day and we do our best to minimize those risks.

8 Q. And where are those risks, if you
9 will, set out?

10 A. Well, they are not set out anywhere.
11 It's just a fact of life that we deal with. Every time
12 we make a decision we have the potential of making some
13 kind of an error for somebody.

14 Q. I appreciate we live with risk and I
15 realize it is a fundamental truth. I am not in any way
16 challenging that, I am basically saying: Has there
17 been any expression of how wrong you possibly could be
18 or right you possibly could be?

19 A. We haven't --

20 Q. Reasonably.

21 A. That is not written down anywhere, to
22 the best of my knowledge.

23 Q. Thank you.

24 THE CHAIRMAN: Won't that be covered to a
25 certain extent in effects monitoring though?

1 DR. EULER: Well, I hope -- I think so,
2 yes.

3 THE CHAIRMAN: And there would be an
4 evaluation of where you went right and where you went
5 wrong.

6 DR. EULER: That's right. My view is
7 that we evaluate constantly, we are constantly
8 evaluating our objectives to see whether we attain
9 them. And so it's just a -- it's almost a daily,
10 somewhere in the Ministry we are engaged in that.

11 MR. HANNA: Q. Dr. Euler, are you
12 familiar with the concept of sensitivity analysis?

13 A. Yes, I am.

14 Q. Is sensitivity analysis a way to look
15 at, if you will, risks of being wrong or right?

16 A. Well, particularly when you are
17 dealing with a computer model, yes. That is where I am
18 most familiar with it.

19 Q. But the concept can be applied to any
20 technology?

21 A. Oh yes, it can be.

22 Q. In your evidence you emphasize a
23 variety of local conditions that must be considered in
24 applying guidelines; correct?

25 A. Yes.

1 Q. Given this great diversity, is it not
2 very difficult to come to broad conclusions regarding
3 the magnitude, intensity, frequency and duration of
4 wildlife impacts?

5 A. No, I don't think it is. I think you
6 can make broad conclusions when you have an
7 understanding, when you have been a professional in an
8 area for a number of years. That is the uniqueness of
9 having person on site with training and experience and
10 interest.

11 Q. So it's your view that the basis for
12 these conclusions -- excuse me, base for these
13 conclusions is the professional judgment of the
14 Ministry foresters and biologists and that there isn't
15 a systematic, if you will, analysis of the advantages
16 and disadvantages with respect to wildlife leading to
17 the conclusion?

18 A. See, that all gets integrated when
19 you evaluate how you are doing towards your objectives.
20 That is where it all comes together. If you are not
21 attaining your objectives, you must be doing something
22 wrong, and then you can begin to seek what you are
23 doing wrong.

24 MR. HANNA: I apologize for being poorly
25 prepared here, Mr. Chairman. I forgot two exhibits

1 which is the one I asked for and the ESSA Report. If I
2 could just get a moment.

3 THE CHAIRMAN: Well, I think it's almost
4 time for the morning break. So why don't we take 20
5 minutes at this time.

6 ---Recess taken at 10:20 a.m.

7 ---On resuming at 10:55 a.m.

8 THE CHAIRMAN: Thank you. Please be
9 seated.

10 MR. HANNA: Mr. Chairman, I believe in my
11 zeal to get going this morning I perhaps broke perhaps
12 normal etiquette in this in telling the other parties
13 what exhibits I was going to refer to, and I apologize
14 and I can tell people now. It might help.

15 I am going to refer to Exhibit 381, I
16 have already referred to the draft ESSA Report which I
17 believe is Exhibit 407, Exhibit 442, 405, 482, and 407.

18 MR. FREIDIN: Do you have those, Dr.
19 Euler?

20 DR. EULER: I didn't write down all those
21 numbers. I have some of them.

22 MR. FREIDIN: 381 is the ESSA Report.

23 DR. EULER: I have two ESSA reports, so
24 it's probably one of those.

25 MR. FREIDIN: 405 is the Baskerville

1 Submission to the Standing Committee.

2 DR. EULER: Yes, I have that.

3 MR. FREIDIN: What is 442?

4 MR. HANNA: Oh, it is the letter from I
5 believe Ms. Murphy to Ms. Swenarchuk regarding the
6 definition of clearcuts.

7 DR. EULER: I don't have that.

8 THE CHAIRMAN: What was that last number?

9 MR. HANNA: 442.

10 THE CHAIRMAN: 442.

11 MR. FREIDIN: What was it?

12 MR. HANNA: Mr. Chairman, I will try in
13 the future to give counsel notice before the day -- the
14 evening what exhibits I am referring to.

15 THE CHAIRMAN: Very well.

16 DR. EULER: What about 407, we seem --
17 oh, that's it. Okay, the draft Essa Report. Okay, so
18 we are all set then.

19 THE CHAIRMAN: Okay. Do you want to
20 proceed.

21 MR. HANNA: Q. Dr. Euler, can we look at
22 Exhibit 381 please and particularly on page 216.

23 DR. EULER: A. All right. That is the
24 draft ESSA Report, right or is that --

25 Q. No, 381 is I believe the final ESSA

1 Report.

2 A. Okay. Is that titled: Effects
3 Monitoring for Resource Protection Guidelines in
4 Ontario.

5 Q. Final Report, March, 1988.

6 A. Yes. Okay, I have that. Now, what
7 page again please?

8 Q. Page 216.

9 A. Yes.

10 Q. Now, I am looking at the first full
11 paragraph there and particularly I believe it's the
12 third sentence which starts:

13 "To say that the guidelines are designed
14 to protect the resource value (i.e. the
15 population) from timber management
16 activities implies that the relationship
17 between habitat and levels of the
18 different resource values is known."

19 I believe it should be 'is'.

20 A. Okay, yes.

21 Q. Do you agree with this conclusion?

22 A. Yes.

23 Q. Would you agree then it's difficult
24 to design something when there is a fundamental basis
25 to it without knowing that fundamental basis and laying

1 it out?

2 A. Yes. If you don't know anything at
3 all -- if you know absolutely nothing, then it is
4 difficult. Fortunately it is not that we know
5 absolutely nothing, it's just as the next sentence
6 reads:

7 "It is obvious that this relationship is
8 not well understood."

9 And those are key words. It is not that
10 we know nothing, it's just it is not well understood.

11 Q. We will be coming to that in a
12 moment, but I first of all would like to know: How do
13 district biologists make this connection when they are
14 applying the moose guidelines?

15 A. Well, they know that in Ontario in
16 general, on average, under the conditions in Ontario
17 they know that their objective is to produce
18 approximately 1 moose per square mile or .39 per square
19 kilometre. They know that that is the objective and
20 they know that if they produce habitat as described in
21 the guidelines, they have a reasonable expectation, if
22 they also control their hunting properly, to meet that
23 target.

24 Q. Is it your experience that these
25 connections have ever been challenged by foresters?

1 A. Oh yes, yes. We are constantly
2 challenged by foresters.

3 Q. Would you say they are justified in
4 these challenges?

5 A. Well, we have -- we welcome
6 challenges of this nature. It's good for us to explain
7 carefully what we are doing and why. That is part of
8 the dynamics of the relationship. It's very, very
9 positive.

10 Q. Is it good for an administrative
11 system to have continual, if you will, going over the
12 hills?

13 A. It's good for any system to be
14 constantly challenged by their people they work with
15 and to continually be asked to support and explain what
16 they are doing. Yes, it's very good for us.

17 Q. Well, I agree with you there too. I
18 guess the point is: There is a fine line between
19 having productive interchange and having too much
20 interchange and that is in fact the reason for Exhibit
21 492; is that not right, the training message?

22 A. Well, no, I wouldn't say that that's
23 the reason for 492.

24 Q. I believe in your evidence you
25 indicated that there is at least occasionally

1 considerable variation among biologists in
2 interpretation of the guidelines; correct?

3 A. Yes.

4 Q. And you would agree that consistent
5 application is preferable?

6 A. Well, not always. Consistency is not
7 necessarily a goal to be achieved, that the natural
8 world is a very, very, very varied place and the
9 guidelines will need to be applied in one way in a
10 certain part of Ontario and slightly different in
11 another part of Ontario.

12 Q. I don't disagree and I think the
13 Board is fully aware and appreciates the difficulty in
14 trying to deal with the variety of the natural
15 environment.

16 But there is the application component;
17 in other words, there is the component that says:
18 Here's how I go about interpreting that in respect to
19 the local condition.

20 A. Mm-hmm, yes. Yes.

21 Q. If we can do that consistently that
22 is better; correct?

23 A. Well, I am not a person who is a
24 strong advocate of consistency. No, there are many,
25 many times when consistency is not necessarily a goal

1 to be achieved.

2 Q. Can I read you from page 3 of Exhibit
3 489 and I am reading the first bullet.

4 A. I don't know what 489 is.

5 Q. 489 is the -- I'm sorry perhaps I
6 didn't mention that. That is the training message that
7 goes with the - I forget the term - the Interim
8 Direction for Application.

9 A. Yes, all right. And where are you
10 reading again, please?

11 Q. Page 3, the first bullet. Perhaps
12 you could read that bullet for me.

13 A. "To ensure some equity and
14 consistency of application of the
15 guidelines where conditions are similar
16 across the province."

17 Q. Well, am I interpreting that
18 incorrectly or does that suggest that there is some --
19 the Ministry is in fact trying to achieve consistency
20 of application?

21 A. Yeah, where the conditions are
22 similar, sure. But very often they are not similar and
23 if you qualify what you say by that, then I have no
24 trouble.

25 Q. Is one source of this inconsistency

1 where conditions are similar due to the absence of an
2 explicit connection between habitat and population?

3 A. In my opinion that is not a major
4 problem, no.

5 Q. Perhaps you have already described
6 this in your evidence and if you can just tell me where
7 in your evidence I will go back and check it. Have you
8 told us what you feel is the major problem?

9 A. The major problem with what?

10 Q. Well, I just asked you if a major
11 problem -- a major reason for the cause of
12 inconsistency was the lack of an explicit connection
13 between habitat and population. You said no, that is
14 not the major cause.

15 A. In my view.

16 Q. What is the major cause in your view?

17 A. The major cause of what? I just
18 don't understand what you are driving at.

19 Q. The inconsistency of the application
20 of the guidelines.

21 A. I think that the cause of that
22 particular problem relates mostly to the fact that
23 newer employees of the Ministry just don't always have
24 the same depth of experience in learning how to
25 implement the guidelines. And I think it's mostly just

1 a lack of experience within the Ministry, with the
2 negotiation process, with understanding and reading on
3 these issues.

4 Q. If we could look at the moose
5 guidelines for just one more moment here, and I am
6 looking on page (ii) again, and I believe the Board has
7 heard some discussion of the deviation clause and I
8 would like to just deal with that just briefly, if I
9 could.

10 I'm looking at the last paragraph on (ii)
11 in the second column. Could you read that for us,
12 please?

13 DR. EULER: A. "If cuts are proposed..."
14 is that...?

15 Q. Yes, please.

16 A. "If cuts are propose which exceed the
17 general guidelines over large areas, the
18 district must receive the Regional
19 Director's approval prior to agreeing to
20 the plan. If a region intends to
21 routinely sanction deviation from the
22 guidelines, the Assistant Deputy
23 Minister's approval must be obtained
24 before approving the plans."

25 Q. Is it your interpretation of that

1 paragraph that only harvesting deviations need to be
2 reported?

3 A. For all practical purposes, yes, it's
4 the harvesting deviations that are intended here.

5 Q. And the only harvesting deviations
6 that need to be reported are simply the size of the
7 cut; correct?

8 A. Well, no. You would also include the
9 distance from cover concern or you could include the
10 shelter patch concern. There are really three areas
11 that would be referred to here.

12 Q. Perhaps you can direct me. I believe
13 in 492 there is some mention of what constitutes a
14 deviation.

15 A. Well, that is true. Now, 492 is
16 Kendrick, right?

17 Q. Is the training message, yes.

18 A. Well, that's true because --

19 Q. Which page? I would just like the
20 page first. Can you just give me the page. There was
21 one where it says two times I believe.

22 A. Yes, that's right. That is on page 3
23 of 489. I don't think that is in 492.

24 Q. I'm sorry, it's 489, thank you.
25 Right. It's on page 3, that full paragraph.

1 A. Yes, that's correct.

2 Q. So the standard there refers to the
3 edge-to-edge cover, the size of clearcut--

4 A. Yes.

5 Q. --and the size of shelter patches?

6 A. That's correct. The shelter patch
7 business, yes.

8 Q. So if my shelter patches are 50 per
9 cent less than three hectares; in other words, one and
10 a half hectares, I would have to report a deviation?

11 A. Okay. Now, you are under the words
12 here on page 3 you mean? Yes.

13 Q. I'm trying to get your interp -- I
14 just want to make sure I understand how this
15 deviation--

16 A. Could work.

17 Q. --is going to work.

18 A. Okay. Now, we talked about this
19 before and we have an exhibit on this, and I wish we
20 could refer to the exhibit where we put it down and
21 then we can make sure we are all doing the same thing.

22 MR. HANNA: Mr. Chairman, I apologize, I
23 was already told this once and I must admit I did
24 not -- perhaps...

25 Q. That exhibit will give us this

1 information in shelter patches, et cetera; will it?

2 DR. EULER: A. The exhibit I think will
3 be very helpful to us, not so much to the shelter patch
4 but the other things that are here.

5 THE CHAIRMAN: Do you want to explore
6 this area?

7 DR. EULER: If you are going to drop it
8 at shelter patch, then we don't need the exhibit. If
9 you are going to go on to these other things, then we
10 do.

11 MR. HANNA: I probably should have had
12 it.

13 MR. FREIDIN: Exhibit 481 I think.

14 THE CHAIRMAN: Do we have it here?

15 DR. EULER: It is one of these things
16 that I just sketched some things on.

17 THE CHAIRMAN: Okay.

18 MR. HANNA: Perhaps, Mr. Chairman, I
19 could go on to a another set of questions, ask Mr.
20 Mander to get it and --

21 THE CHAIRMAN: Okay. If Mr. Mander is
22 monitoring the progress of the hearing, would he bring
23 in Exhibit 482 -- sorry, 481.

24 MR. FREIDIN: That's my assessment based
25 on the description we have.

1 MR. HANNA: Q. Dr. Euler, I will leave
2 this and come back to it.

3 DR. EULER: A. Okay.

4 Q. Can we move to Exhibit 405, please.

5 A. Okay. That will be Baskerville's
6 Report to the Standing Committee then. I have that
7 exhibit here.

8 Q. Have you read the exhibit?

9 A. Yes, I have.

10 Q. Now, the first page, the last
11 paragraph there he presents an analogy; is that
12 correct?

13 A. Oh, yes. The speed analogy, yes.

14 Q. Perhaps you could read just to
15 refresh people's memory what exactly the analogy is,
16 starting with: "For example..." or perhaps read -- it
17 is probably worthwhile to read that whole paragraph I
18 think because it is the context of my question.

19 A. All right, the whole paragraph?

20 Q. Yes.

21 A. "It is not possible to manage a
22 natural system just by applying
23 constraints. It is essential to have a
24 goal and a set of actions designed to
25 cause the system to converge on that goal

1 over time. In fact, the psychological
2 impact of constraints is
3 counter-productive to management. For
4 example, speed limits constrain all of us
5 in driving a car. If you are caught
6 exceeding the speed limit you may be
7 penalized by a fine and an assessment of
8 points against your driver's licence. On
9 the other hand, if you drive 80
10 kilometres per hour in a 100 kilometre
11 per hour zone, you are not rewarded.
12 Whenever constraints limit a human
13 activity, the reaction is to minimize the
14 cost of just meeting the constraint."

15 Q. Would you agree with this view?

16 A. Yes.

17 Q. Would you say that the guidelines
18 correspond to the constraint type approach that Dr.
19 Baskerville speaks about in this paper, in his Audit
20 and other writings?

21 A. Basically they do, yes.

22 Q. Perhaps -- I am going to continue
23 with our line of questioning but I would like to get
24 just a word of clarification from Mr. Greenwood if I
25 could, or maybe Mr. Hynard. Either one of you.

1 At what point in the timber management
2 planning process are cut blocks laid out?

3 MR. HYNARD: A. Well, they are laid
4 out -- in terms of the stages of public participation,
5 it would be between Stages 1 and 2. So those cuts are
6 laid out fairly early in the planning process.

7 Q. So I would be able to go in at Stage
8 2 --

9 A. The public information centre, and
10 you would be able to see where those cuts would occur.

11 Q. And I would have a very detailed idea
12 of what they are going to look like, where the shelter
13 patches are going to be, the width-to-width cover, all
14 the details of the cut?

15 A. Yes, yes. You would see those
16 allocations mapped out.

17 Q. So I would know when I go in at that
18 stage what the final state of the forest is going to
19 look like after the activity has taken place?

20 A. Well, to the degree that it is
21 mappable at a scale of 1:15,840 you would. If there
22 were provisions in the groundrules or the prescriptions
23 for modified operations that were not mappable at that
24 scale, you would have to refer to those tables to know
25 for sure.

1 THE CHAIRMAN: Mr. Hynard, that wouldn't
2 address at that stage necessarily the areas of concern;
3 would it?

4 MR. HYNARD: Yes, the areas of concern
5 would also be known at that stage. They would not be
6 final at that stage because other concerns may be
7 raised at the public information centre itself.

8 THE CHAIRMAN: No, they would be raised
9 but they wouldn't be transposed or sort of dealt with
10 on the maps at that stage?

11 MR. HYNARD: No, not matters that arose
12 at that time, but I know on my own plan, which I am
13 working on evenings, those -- I'm laying out those cuts
14 right at the present time and we have prepared -- the
15 district planning team and myself have prepared area of
16 concern guidelines that will tell the public when they
17 come to that public information centre exactly how we
18 will modify our operations in those areas of concern.

19 They will be identified on the maps and
20 the planning team will be at the public information
21 centre to answer questions if you don't exactly
22 understand what will happen.

23 MR. HANNA: Q. Mr. Hynard, I am a little
24 confused, and perhaps Mr. Oldford can clarify this for
25 me. I was looking at the transcripts and I am looking

1 now in the transcripts where Mr. Tuer was doing his
2 cross-examination and I believe he is talking about, in
3 this case, unmerchantable stands and where they might
4 be located and whatever.

5 MR. HANNA: Perhaps it is just easier for
6 me just to read this in, Mr. Chairman. The reference
7 is page 14838.

8 MS. BLASTORAH: What volume?

9 MR. HANNA: I'm sorry, Volume 89 and it
10 is lines -- I'm starting at line 23, and I will read
11 it. It says --

12 MR. FREIDIN: Just a moment. This is
13 cross-examination of whom?

14 MR. HANNA: The panel.

15 MR. FREIDIN: Who answered the question?
16 Who answered the question in the transcript?

17 MR. HANNA: Mr. Oldford is -- well, there
18 is an answer by Mr. Hynard and there is an -- it is Mr.
19 Oldford's answer I am really interested in.

20 MR. OLDFORD: I have page 14838.

21 MR. HANNA: Q. All right. Perhaps I can
22 read that in then.

23 "MR. TUER: Q. Mr. Hynard, the idea here
24 being to identify these areas..."

25 Again referring to unmerchantable stands and leave

1 areas:

2 "...in the timber management plan which
3 was a five-year project, I understand.
4 that practically speaking is very
5 difficult in the timber management plan
6 stage to identify those areas; would you
7 agree with that?

8 MR. HYNARD: A. These training messages
9 are so new that I haven't seen them.

10 MR. TUER: Q. Mr. Oldford, have you any
11 comment on that?

12 MR. OLDFORD: A. Yes, I would agree that
13 when preparing a planning and laying out
14 an area for harvesting over five years it
15 is difficult to identify where the stand
16 boundaries are between the allocated cuts
17 and stands that one might leave to break
18 up the cut."

19 Do you recall that response, Mr. Oldford?

20 MR. OLDFORD: A. Yes, I will just read a
21 few items before that. What I was referring to there,
22 Mr. Hanna, is the fact that if an area has been
23 allocated for harvest it is difficult to identify the
24 FRI stand boundaries right on the ground.

25 So to be able to say that this stand will

1 be left exactly as identified on the FRI map is
2 difficult, but to be able to identify that stand and to
3 be able to leave that stand more or less as it is
4 identified is not that difficult. You can imagine --

5 Q. I appreciate the difference between
6 what is on the ground and what is on a map and I
7 understand that.

8 A. The difficulty in translating what is
9 on a map to real ground activity.

10 Q. The reason I am asking this question,
11 Mr. Oldford, and perhaps you can help me, and that is I
12 am trying to a put myself in the position of a member
13 of the public coming in at Stage 2 and looking at the
14 information the Ministry presents in terms of a cut and
15 trying to get a sense of what type of information they
16 are likely to see.

17 MR. HYNARD: A. Yeah. Let me try that
18 one for you. I guess the original question was Mr.
19 Martel's and he asked for a distinction between
20 residual timber and residual stands, I believe, and I
21 stated that there would be a difference between
22 residual timber in a stand which was cut and an
23 unmerchantable stand from which no timber was cut.

24 And then Mr. Tuer went on -- I think I
25 understand his question better now than perhaps I did

1 then, or at least in your context now.

2 Mr. Tuer stated that the idea here being
3 to identify these areas in the timber management plan,
4 I understand it, practically speaking it is difficult.
5 And I understand that question to be now difficult to
6 identify those stands from which merchantable material
7 will be removed and those which will be regarded as
8 totally unmerchantable stands.

9 Well, Mr. Tuer was right, that is
10 difficult. The plan which would show those stands
11 allocated for harvest. The public, when they viewed
12 those maps, would say: Aha, the company intends to cut
13 those stands, and that's true.

14 Now, management plans are plans, they are
15 forecasts of what will occur during the five-year
16 period. It doesn't necessarily mean that all of the
17 actions provided for in the plan will actually take
18 place. When the company arrives at that allocated
19 stand and says: Ooh, this has a lot more
20 unmerchantable timber in it than we thought, we will
21 bypass this stand. That is difficult to identify five
22 years ahead.

23 I think that's what Mr. Tuer meant. In
24 other words, it is possible that there would be more
25 timber left standing for that reason than the

1 management plan and the allocation maps predict.

2 THE CHAIRMAN: It is always on the
3 positive side, though; they can't take more than what
4 is allocated?

5 MR. HYNARD: Not without a plan
6 amendment, that's right.

7 MR. HANNA: Perhaps, Mr. Chairman --

8 MR. MARTEL: Would you come across that
9 situation in conifer forests as much as you would in
10 the area that you manage, for example?

11 MR. HYNARD: Sorry, Mr. Martel, would it
12 occur more often in conifer forests than in my area?

13 MR. MARTEL: Yes.

14 MR. HYNARD: No. I have a lot of
15 inoperable stands also and parts of stands. My ground
16 is pretty rough and rugged and broken and the timber is
17 highly variable and the markets are incomplete, and
18 there would be bypass occurring.

19 There would be stands allocated for
20 harvest in which no harvest will occur because it is
21 simply not an economically viable cut or perhaps a part
22 of the stand. So the same principle applies, yes.

23 MR. HANNA: Perhaps we will explore this
24 more in Panel 15, Mr. Chairman.

25 THE CHAIRMAN: I have your exhibit now,

1 481, if you want to go back to that, Mr. Hanna.

2 MR. HANNA: I just want to see in terms
3 of the flow, it might be -- perhaps I can continue on
4 with this and then I will come back to it, Mr.
5 Chairman.

6 Q. Dr. Euler, would you say that the
7 forest industry views the Moose Habitat Guidelines as a
8 cost constraint to their operations?

9 DR. EULER: A. Yes. In most cases they
10 do, yes.

11 Q. If you were -- if we can put you in
12 the position of working for a forest company and you
13 had the interests of your employer at heart, would you
14 be inclined to specify cut blocks less than those
15 outlined in the guidelines for the purpose of creating
16 wildlife habitat?

17 A. I just don't know how to address
18 that. I mean, to put myself -- I have never been
19 employed by a company.

20 Q. Okay.

21 A. I don't know how to say what I would
22 do in that circumstance.

23 THE CHAIRMAN: Why don't you put the
24 question to Mr. Oldford who has been in that position.

25 MR. HANNA: Q. Mr. Oldford, I will read

1 the question again.

2 MR. OLDFORD: A. I believe you should
3 ask it again. I was reading the transcript.

4 Q. When you were a responsible company
5 forester and you were serving your employer's interest
6 to the best of your ability as you do now for the
7 Ministry, would you be inclined to specify cut blocks
8 less than those outlined in the guidelines for the
9 purpose of creating wildlife habitat?

10 A. No.

11 Q. Would you be inclined to go as close
12 to the limit as possible if this were to result in
13 lower harvesting costs for your company?

14 A. I think it is fair to say that I
15 would have harvesting costs as an important
16 consideration, but at the same time I would want to
17 work effectively with the Ministry and develop a very
18 good effective working relationship.

19 And if I was always trying to take things
20 right to the extreme limit in the favour of the
21 company, I wouldn't be able to develop that rapport.
22 And as you have heard from this panel over and over
23 again, it is a good give and take relationship.

24 Q. Right. But the reason we have laws
25 is to help people know where the boundary is so we

1 don't step over it, and I am not suggesting that you as
2 a company forester would try to break the law.

3 I think that's what Dr. Baskerville's
4 analogy is saying, no one responsibly wants to go out
5 and break the law.

6 A. I agree with that comment.

7 Q. And so I said to you: This is the
8 law, you cannot have more than 400 hundred metres
9 edge-to-edge, I wouldn't be able - how would you say -
10 challeng the Ministry in any way, that would the law
11 and that would be where I would go if that was the
12 limit.

13 A. Are you asking me to confirm your --

14 Q. Yes?

15 A. I think that would be a fair
16 statement and all of that then has to be meshed into
17 the good words we heard from Dr. Euler about the 60/40
18 split and the flexibility in the guidelines.

19 MR. HYNARD: A. I would like to answer
20 your question too, Mr. Hanna, if I may. And speaking
21 as a forester and with regard to providing protection
22 for other forest uses and values through these areas of
23 concern and the prescriptions for them, I would have to
24 say yes, that I attempt to minimize the impact that
25 that will have on the timber production program keeping

1 in mind the purpose for protecting that other use or
2 value.

3 You have to keep in mind that my goals --
4 my goal of management is to provide for an economic
5 contribution through wood production and to provide for
6 other forest uses and values. I have those two
7 objectives. I don't want to place unnecessary
8 restriction on timber production in order to provide
9 excessive protection, unnecessary extra protection for
10 that value, but I do want to protect the value.

11 With regard to Dean Baskerville's
12 analogy, his analogy was: Well now, just how much
13 faster -- how much over the speed limit can we go
14 before we are going to get caught. And the inference
15 being that we are speeding.

16 The answer is: No, we are not speeding.
17 After that decision has been made it goes through the
18 planning process, the district manager has satisfied
19 himself that those values are being protected, that
20 plan is implemented as it is written. There isn't
21 this, you know, another 10 kilometres an hour over and
22 above that. Those cuts are laid out and those
23 prescriptions are there and they are followed.

24 Q. Mr. Hynard, are you a Crown forester
25 or a company forester?

1 A. I'm a Crown forester. I think
2 company foresters would take the same view that I do
3 and that is, there is no -- that they would push not to
4 have unnecessary extra restrictions to provide
5 protection that was over and above the needs of that
6 other value. I believe they would react very much the
7 same.

8 MR. HANNA: Perhaps we have gone far
9 enough, Mr. Chairman. Can we now have Exhibit 481,
10 please.

11 THE CHAIRMAN: (handed)

12 MR. HANNA: Q. The information on the
13 diagram, perhaps you can just explain - I realize the
14 Board has heard it before - but just very quickly
15 summarize and capsule, if you could.

16 MR. FREIDIN: For the record, we are
17 looking at Exhibit 481.

18 DR. EULER: Okay. The operative sentence
19 is this last one on page 3 of Exhibit 481 and that
20 says:

21 "In cases where exemptions noted above
22 result in the guidelines not being
23 applied to 60-80 per cent of the
24 harvested area in the operating plan, the
25 approval of the appropriate field Deputy

1 Minister will be required."

2 So, this would represent 60 to 80 per
3 cent of the harvested area in the operating plan. And
4 if the guidelines are being applied in this area and
5 the cuts -- the harvest blocks, cuts have not
6 significantly exceeded the guidelines which is twice
7 the guidelines, then no approval of the appropriate
8 field Assistant Deputy Minister will be required.

9 But as soon as the guidelines are
10 exceeded by more than two times in the 60 to 80 per
11 cent of the harvested area, then the field Assistant
12 Deputy Minister's approval is required.

13 So in this 20 to 40 per cent of the area
14 one can exceed the guidelines by more than two times
15 without approval -- without special approval of the
16 field Assistant Deputy Minister.

17 Now, that doesn't mean -- the plan will
18 still go through its normal process, it still goes
19 through the normal process, but the special approval of
20 the ADM is not required.

21 Q. Okay. Can we go back then to the
22 deviation clause. I am going to be referring here
23 to -- I guess, we will refer to that Exhibit 41, 49 and
24 310, particularly the deviation clause in 310. Do you
25 have those in front of you?

1 A. Let's see. I have 489, and 310 is
2 the Moose Guidelines?

3 Q. Right, and the diagram behind you.

4 A. Okay, I have -- yes. Okay, yes.

5 Q. Now, we had established that the
6 deviations only apply to harvesting; correct?

7 A. Yes. Well, primarily. Virtually
8 only, yes.

9 Q. Well, that is a very important thing.
10 Does it or doesn't it?

11 A. Well, you see, it applies to
12 regeneration to the extent such as we have specific
13 area of concern point 5(a) and (b), see, so that
14 addresses the issue of --

15 Q. Slowly, I am lost here. What were
16 you saying there?

17 A. Well, you talked about -- you talked
18 about whether the guidelines apply to harvest only.

19 Q. Correct. And I believe you had said
20 yes to that previously.

21 A. Well, what I think I said was
22 virtually yes or basically yes or something to indicate
23 that most of it, 98 per cent of it, 99 per cent of it,
24 96 per cent of it, yes. But there are these small
25 situations where it may apply to regen.

1 THE CHAIRMAN: Take a look, Mr. Hanna, at
2 paragraph 5(a) and (b) under specific areas of concern
3 on page 2 of the guidelines.

4 MR. HANNA: Yes. I see that very
5 clearly, Mr. Chairman. I am looking at the deviation
6 clause which says two things, in my view. First of
7 all, it says -- it refers to the general guidelines not
8 to the specific area of concern guidelines. Second of
9 all, it refers to cuts.

10 I see no reference to anything other than
11 cuts, and I am concerned about this one to two per cent
12 that seems to be sloshing around here.

13 DR. EULER: Okay. So what should we do?
14 What should we do?

15 MR. HANNA: Q. Well, can you direct me
16 where in that clause in terms of deviations it makes
17 reference to section 5(a), 5(b) or any of the sections
18 under the specific areas of concern guidelines?

19 DR. EULER: A. Well, the intent there
20 was to use this word general guidelines to be inclusive
21 and to include everything.

22 THE CHAIRMAN: The second sentence in
23 that deviation clause doesn't necessarily refer just to
24 cuts; does it, Dr. Euler? It can be read as referring
25 to the whole guideline?

1 DR. EULER: Yes, I think so. Sure, it is
2 not -- yes, it is a very general statement.

3 MR. HANNA: Q. Okay. Now, let's go back
4 then to -- so what we are saying then, the deviation
5 clause is intended to apply to both the specific area
6 of concern guidelines and to the general guidelines?

7 DR. EULER: A. Oh, yes. Yes, it's
8 intended to, yes.

9 Q. And it's intended to apply to all of
10 the conditions under each one?

11 A. Yes, mm-hmm. Yes, sure. So if you
12 were routinely, you know, putting roads through aquatic
13 feeding areas that would not be a happy event.

14 Q. All right. Now, let's take that
15 particular example you just mentioned. Now, how do I
16 use the two times and the 60 to 80 per cent rules to
17 decide when I have had too many roads through aquatic
18 feeding areas such that I have to report a deviation?

19 A. You understand, do you not, that
20 Exhibit 489 supersedes anything and everything on page
21 2 of the guidelines. This is new.

22 Q. I appreciate fully and I appreciate
23 it's also a draft and all the other provisos that have
24 been put around it.

25 A. Okay. All right.

1 Q. But I am simply asking you -- perhaps
2 I will go back again. I thought we were talking about
3 here on page 3 of Exhibit 489 about how to interpret
4 the guidelines.

5 A. Yes. Okay. And in virtually every
6 case that is going to be cut. Occasionally it may be
7 something else.

8 Q. So back to your example. Please
9 explain to me -- if you want to draw another drawing or
10 whatever, please explain to me how you use the two
11 times rule and the 60-80 per cent rule to decide when
12 you have had enough roads through aquatic feeding
13 areas?

14 A. That would be left up to the
15 professionals on the site to make their best
16 professional decision.

17 Q. But this isn't a professional
18 decision, Dr. Euler, this is a directive saying this is
19 when you have to make a report to the Assistant Deputy
20 Minister; is that not correct?

21 A. Yes, it is and it says:

22 "Where a harvest block or combination of
23 continuous harvest blocks are proposed
24 significantly exceed the standards in the
25 guidelines, in other words two times,

1 these exceptions should be specifically
2 listed."

3 This item is superseding what is in page
4 2 of the guidelines and it refers specifically to
5 harvest blocks.

6 Q. Well, excuse me now. Now, are we
7 saying that it doesn't apply to aquatic feeding areas?

8 A. That's right. What I was talking
9 about was -- and because you asked me that question,
10 were the words on page 2 of the guidelines, not this
11 new exhibit.

12 THE CHAIRMAN: Okay. Mr. Hanna, before
13 we run around the mulberry bush a few more times let's
14 try and shorten this up.

15 What you are saying, Dr. Euler, is this
16 deviation clause on page 2 of 310 is superseded by the
17 Draft Interim Direction for Application of the
18 Guidelines, Exhibit 489?

19 DR. EULER: Yes, that's right.

20 THE CHAIRMAN: Because the last paragraph
21 on page 3 does not appear to refer to other than--

22 DR. EULER: That's right.

23 THE CHAIRMAN: --cuts.

24 DR. EULER: That's correct.

25 THE CHAIRMAN: Or harvest cuts?

1 DR. EULER: Yes.

2 THE CHAIRMAN: Then this general
3 direction contained in the last sentence on Exhibit 310
4 would no longer be applicable?

5 DR. EULER: That would be my
6 interpretation, yes, Mr. Chairman.

7 THE CHAIRMAN: Okay.

8 MR. HANNA: Thank you, Mr. Chairman.

9 Q. So, we are dealing here simply with
10 harvesting and cut blocks?

11 DR. EULER: A. In exhibit...

12 THE CHAIRMAN: 389.

13 DR. EULER: 489.

14 THE CHAIRMAN: 489.

15 DR. EULER: Yes we are.

16 MR. HANNA: Q. And that supersedes -- so
17 this is the operative statement. I just want to make
18 sure I am dealing with the right operative statement.
19 The right operative statement -- I can cross that out
20 and I can look at page 3 on 489?

21 DR. EULER: A. Yes. Well, you
22 understand of course that this is a draft document--

23 Q. Oh, I appreciate the difficulties.

24 A. --that will be finalized...

25 Q. We may have to go back through this a

1 number of types before we finally get the final one,
2 and --

3 THE CHAIRMAN: But that, Mr. Freidin, is
4 the draft position of the Ministry? That is certainly
5 Dr. Euler's interpretation.

6 DR. EULER: That is my interpretation.
7 Now, this is the trouble with putting drafts out, is we
8 may have missed a particular item. For example, we
9 might want to put a sentence in there about access
10 roads. But in trying to come to grips with it and it
11 is our first draft for discussion, we didn't carry over
12 that business about these access roads and things.

13 MR. FREIDIN: I can't respond to your
14 question and say what the draft position of the
15 Ministry of Natural Resources is.

16 THE CHAIRMAN: No. I guess all we are
17 ascertaining is what Dr. Euler has told the Board and
18 indicated is the Ministry's understanding of what this
19 interim direction --

20 MR. FREIDIN: I can't answer that
21 question. I can't answer that question off the top of
22 my head. I mean, it's a draft, it may very well be
23 that the discussion taking place here may raise some
24 issues that will lead to the draft being redrafted and
25 we will have another draft.

1 THE CHAIRMAN: No, we understand that.
2 It is just that for the purposes of the questioning --

3 MR. FREIDIN: I can't answer the
4 question.

5 THE CHAIRMAN: Well, okay. Let's sort of
6 indicate that you can proceed with the questioning on
7 the basis of Dr. Euler's answer, because that is the
8 best we have at this point in time. If they change
9 their position, then they change their position.

10 MR. HANNA: Yes, Mr. Chairman.

11 MR. MARTEL: Could I back up for a
12 moment, because I wrote down that Dr. Euler indicated
13 that it's primarily harvest but on occasion it can
14 still encompass regen.

15 DR. EULER: Well, and my understanding,
16 Mr. Martel, is that we were talking -- at that point
17 Mr. Hanna was asking me questions about page 2 of the
18 guidelines and I was responding in that context.

19 MR. MARTEL: Well, where do you get
20 something then that responds to regeneration?
21 If it's not in here any longer because this supersedes
22 this, where do you deal with regeneration?

23 DR. EULER: Well, that's a good question.
24 You see, we haven't come to grips with that in our new
25 approach yet. See, that is a problem that we have got

1 to come to grips with.

2 MR. MARTEL: You are coming to grips with
3 that now?

4 DR. EULER: Yes. And one of the ways we
5 come to grips is, this has gone out for discussion and
6 I am sure somebody out there has said: Hey, you guys
7 forgot to put in a clause about regen in your new
8 direction. And we will have to say: You are right,
9 now we have got to fix that.

10 MR. MARTEL: All right.

11 MR. HANNA: Q. Just one thing raised
12 there, Dr. Euler. Who has this gone out to discussion
13 with?

14 DR. EULER: A. 489 and 492. Well, I
15 just don't know, because I just don't know where this
16 has gone within the Ministry or who exactly.

17 THE CHAIRMAN: But before something is
18 finalized, is there an opportunity for public input of
19 a direction like this?

20 DR. EULER: Probably not public input in
21 this, I don't think so.

22 THE CHAIRMAN: Well, where would you get
23 this input other than from just Ministry staff?

24 DR. EULER: You mean to these Direction
25 for Application of the Guidelines?

1 THE CHAIRMAN: How are you going to be
2 advised that this may be deficient?

3 DR. EULER: Well, it would be in
4 discussions with our staff and, to the best of my
5 knowledge, this wouldn't go to the public. But, you
6 see, I could be wrong on that. Maybe the Ministry is
7 planning to put this to the public. I just don't know,
8 Mr. Chairman.

9 THE CHAIRMAN: Mr. Clark, could you offer
10 any assistance?

11 MR. CLARK: I believe that when we
12 initiated this process it was essentially an internal
13 process to clarify our understanding of the guidelines
14 and how they were to be applied.

15 I would have -- I think I would define it
16 as a housekeeping effort that was aimed at avoiding
17 inconsistent or inappropriate application of the
18 guidelines. I can't speak with complete assuredness as
19 to what the final or ultimate review process will be,
20 but my sense is that when we got into it that it was an
21 internal review.

22 THE CHAIRMAN: But isn't that a sort of -
23 I won't call it a serious omission - but a flaw in the
24 process, to the extent that the guidelines themselves
25 have some form of public review.

1 Normally before they are finalized they
2 are out there, they are being applied in a draft form,
3 people have an opportunity for input?

4 MR. CLARK: They certainly did on the
5 guidelines themselves, yes.

6 THE CHAIRMAN: The guidelines. Now, with
7 a directive where you are materially changing perhaps a
8 provision of the guidelines itself which is superseding
9 the guidelines without any opportunity for input by
10 other than those in the Ministry, aren't you in a sense
11 undermining the original process and the development of
12 the guidelines themselves?

13 MR. CLARK: Yeah. It sort of harkens
14 back to an amendment procedure that has a provision for
15 public input, and I am not sure what the answer is
16 right now. I appreciate very much what you are saying,
17 if we materially change in a significant way, a case
18 could be made that some kind of public review should
19 be --

20 THE CHAIRMAN: Well, just based on your
21 own evidence of your panel, if you leave out reference
22 to access roads or renewal that is in the guidelines in
23 terms of that general statement on deviation on page 2
24 and you develop these new direct activities which
25 supersede--

1 MR. CLARK: Mm-hmm.

2 THE CHAIRMAN: --that guideline, and you
3 leave out reference to what is already in the guideline
4 without any form of public review, then you may have a
5 difficulty.

6 MR. CLARK: The problem is though --

7 DR. EULER: See, it should be very easy
8 to just insert a sentence and say something about: The
9 specific area of concern guidelines still apply.

10 THE CHAIRMAN: I know, but what I am
11 trying to say is, it has come up here.

12 DR. EULER: Yes.

13 THE CHAIRMAN: In terms of this hearing
14 because it was raised by Mr. Hanna or whoever raised
15 it. Had it not come up here, then presumably these
16 could be finalized without any form of public review
17 without that insertion?

18 MR. CLARK: That's correct.

19 DR. EULER: Well, it's possible, sure.

20 THE CHAIRMAN: And the argument is,
21 should you be promulgating amendments in effect to the
22 guideline with no public input, or with no process for
23 public input. Is that not the question?

24 DR. EULER: Well, that's a good question
25 and part of it is the difficulty of dealing with

1 something in this formative stage, at this draft stage.

2 Typically those guidelines -- these
3 guidelines -- I was thinking last night, it took us
4 really from first draft to end about, what, 14 years to
5 go through all the process and --

6 THE CHAIRMAN: And if what you are
7 advocating, Dr. Euler, is that these interim directions
8 will be even in force for some period of time, so that
9 any deficiency such as perhaps the one identified here,
10 could be brought to the attention of the Ministry, that
11 in itself may be a form of public input?

12 DR. EULER: Mm-hmm. Well, that's right.

13 MR. FREIDIN: Mr. Chairman --

14 DR. EULER: And, you see, we are going
15 out with some training messages and it occurred to us
16 that the biggest problem is in the cut area, not in
17 these other areas.

18 And so in Mr. Hanna's question I said:
19 Well, yes, virtually all, basically all, almost all cut
20 but I didn't want to leave out the fact that it could
21 have a problem in those areas and just -- I didn't want
22 to say: Well, we've forgotten about those entirely.
23 It's just we haven't yet had a chance to come to grips
24 with that.

25 MR. CLARK: I think -- these things have

1 a way of evolving I think and, frankly, when we
2 originally got involved in this particular process, it
3 was simply a concern that the Assistant Deputy Minister
4 for northern Ontario had that there be a common
5 understanding of what the guidelines meant and --

6 THE CHAIRMAN: That is different, Mr.
7 Clark, than changing the guidelines themselves by
8 saying this supersedes something in the guidelines
9 which is going to be left out and no longer has to be
10 followed.

11 MR. CLARK: Well, absolutely and, as I
12 say, it's an evolutionary thing and I think in
13 assigning responsibility for dealing with this, the
14 draft that we've got may contain some hookers and I
15 guess the question is: How do you deal with that.

16 And my answer right now is, I don't know,
17 that is a decision that the Ministry will have to make.

18 MR. MARTEL: How can you ensure though
19 that at the end -- at the end of the process, if you
20 don't have public input, that something that may not be
21 used frequently but is not ignored when it's already in
22 the guidelines and, in fact, could end up not being
23 there without someone there prodding?

24 THE CHAIRMAN: Mr. Freidin?

25 MR. FREIDIN: Mr. Chairman, I see the

1 concern of the Board. I indicated before I can't tell
2 you what the Ministry's interpretation of the draft is
3 but could I have an opportunity to consult with my
4 client. It may very well be that the line of
5 questioning which is going on now is a result of an
6 assumed interpretation which in fact may be
7 inconsistent with the direction the Ministry is going,
8 and so if I could have that opportunity, I will advise
9 the Board.

10 THE CHAIRMAN: Okay. But bear in mind
11 that those responsible to some extent for applying
12 these guidelines are gentlemen on this very panel and
13 if they don't understand what the interpretation should
14 be but somebody back at head office does, there may be
15 some problems in that area as well.

16 In other words, there should be a
17 consistency of understanding amongst the Ministry to a
18 certain extent, particularly senior members of the
19 Ministry.

20 MR. CLARK: Well, I think my answer to
21 what I am hearing is, you have raised some good
22 questions and I appreciate that. We are dealing with a
23 draft, in other words, the process is not complete and
24 I am unable at this time to tell you what the process
25 for finalization of these -- of this material will be.

1 THE CHAIRMAN: Ms. Seaborn?

2 MS. SEABORN: Well, Mr. Chairman, I am
3 not quite sure what the purpose is of Mr. Freidin
4 wanting, as he says, to consult with his client. Is he
5 talking about consulting with people at MNR or the
6 panel of witnesses, because on a procedural basis I
7 have some difficulty with Mr. Freidin discussing this
8 issue with his witnesses.

9 THE CHAIRMAN: No, I don't think really
10 that --

11 MS. SEABORN: And I wasn't quite clear
12 what it was Mr. Freidin was getting at.

13 THE CHAIRMAN: I assumed he wasn't going
14 to be discussing it with the witnesses under
15 cross-examination.

16 MS. SEABORN: That's fine. Thank you.

17 THE CHAIRMAN: If he wanted to bring to
18 the Board an interpretation of others in the Ministry.
19 But I am just raising on behalf of the Board the
20 difficulty the Board has with perhaps a dual
21 interpretation by members other than this panel and
22 other members of the Ministry.

23 In any event, Mr. Hanna, I think rather
24 than flogging a dead horse, I think the concerns of the
25 Board have been raised as to the implications of

1 changing the guidelines with a process that may not
2 allow for public input and that may be addressed by Mr.
3 Freidin at a later stage in the proceedings.

4 MR. FREIDIN: Mr. Chairman, I just don't
5 want to leave it go without saying that this is a draft
6 document, this draft document was introduced while this
7 panel was on the stand, and they haven't had an
8 opportunity -- that they haven't been involved in this
9 process since they got involved as witnesses in this
10 panel.

11 THE CHAIRMAN: Okay. But we are just
12 going on, Mr. Freidin, what this panel is saying their
13 interpretation of this document is. And you may wish
14 to come back and indicate that their interpretation was
15 perhaps not clarified to the extent that that is not
16 the way this will be interpreted by the Ministry in
17 terms of changing guidelines without public input.

18 In any event, this is something you can
19 deal with at a later stage. I don't think we can go
20 much further on this, Mr. Hanna.

21 MRS. KOVEN: I have just one more
22 question about this. What is the relationship between
23 these interim guidelines and the situation of a
24 temporary limit on clearcut size that you feel will be
25 removed at some point in time when your biologists

1 become more familiar with how to implement the
2 guidelines?

3 DR. EULER: These interim guidelines do
4 tend to put some limits on clearcut size in certain
5 circumstances. So that is the limit insofar as it
6 exists.

7 THE CHAIRMAN: Did you not indicate at
8 some stage of the game you expect these to come off--

9 DR. EULER: That's right.

10 THE CHAIRMAN: --and you will be going
11 back to the guidelines?

12 DR. EULER: We would go back to the
13 guidelines as expressed in this document, that's right.
14 That's our intent, and that this is a relatively
15 temporary measure.

16 THE CHAIRMAN: Well, we are still
17 concerned insofar as how this document may change the
18 guidelines--

19 DR. EULER: Mm-hmm. I understand that.

20 THE CHAIRMAN: --in the interim period.

21 DR. EULER: Yes, I understand.

22 THE CHAIRMAN: And what method there may
23 be for making--

24 DR. EULER: Public input.

25 THE CHAIRMAN: --sure that whatever

1 changes are forecasted by this will have the
2 availability of perhaps some public input, other than
3 just the Ministry.

4 DR. EULER: Right.

5 THE CHAIRMAN: I think that's about as
6 far as we can go.

7 MR. HANNA: Thank you, Mr. Chairman.
8 That question was quite innocent actually about --

9 THE CHAIRMAN: Well, Ms. Swenarchuk asked
10 what she believed to be an innocent question some time
11 ago and the Board interpreted that question to have
12 some other kinds of ramifications.

13 So you run into this from time to time.
14 We apologize, but ultimately we are charged with the
15 decision in this matter and we have to be clarified in
16 our own minds what some of these things mean.

17 MR. HANNA: Q. Dr. Euler, I am going to
18 come back to what is meant in these deviations, but I
19 wasn't aware of this business about the two-year limit
20 that these will be in place. That two years starts
21 when?

22 DR. EULER: A. Well, we went over this
23 quite extensively in earlier testimony. It starts
24 approximately now and we would hope -- we don't know
25 for sure, but we would hope that it wouldn't have to go

1 on forever and that there would be something on the
2 order of a two-year period at which -- after which,
3 when the common understanding among staff has been
4 developed, that we can take them and revert back to the
5 Timber Management Guidelines Provision of Moose Habitat
6 as written.

7 Q. Could you explain to me why you would
8 not want to include the last paragraph in paragraph 3
9 which seems quite explicit in terms of what a deviation
10 might be in the guidelines themselves? Why would you
11 only want that as an interim basis?

12 A. Because I firmly believe that the
13 key -- the key criteria is to ask the people how the
14 moose are doing. These guidelines are merely a tool,
15 they have very little substantive value because what we
16 are trying to do is manage wildlife, not manage
17 guidelines.

18 Q. I hear clearly what you are saying,
19 but it somewhat says that this is totally irrelevant?

20 A. It does not say it is totally
21 irrelevant. That is not what it says, it is not what
22 is intended. These are tools that we are trying to use
23 to achieve our objective. Our objective is what is
24 important.

25 Q. Why do we have deviation reporting?

1 A. Because we have learned that some of
2 our practitioners are not as skilled in wielding the
3 tools as we would have wished.

4 Q. So we won't need deviation reporting
5 in the future?

6 A. I think that we will not.

7 Q. Thank you.

8 MR. MARTEL: Could I just ask question
9 because the timing -- Mr. Freidin has said this is a
10 draft, you said it will last approximately two years,
11 you are not sure when the two years will start, we have
12 just come across a problem with the draft.

13 Has anybody got any idea when the final
14 draft will be prepared so that we know when the two
15 years will begin that this will be applied?

16 DR. EULER: Well, I don't, Mr. Martel.
17 It's just -- all of these things take a long time and
18 they are really hard to develop.

19 MR. MARTEL: Yes, but the problem here is
20 we are talking about a factor of time. No one knows
21 when the time is going to start, no one knows when --
22 and there are flaws in this document apparently.

23 So when does all of this -- when do we
24 get off the starting mark with the official document
25 and the time that you are not going to have to report

1 and so on? It is rather confusing, to say the least.

2 DR. EULER: See, part of the problem is
3 when you bring draft documents out for this kind of
4 intense scrutiny it just happens. I mean, there is
5 just no way that we can avoid confusion when we
6 scrutinize a draft document on a word-by-word basis. I
7 mean, it's just going to be a difficulty.

8 MR. HANNA: Q. Do you see something
9 wrong with doing a detailed scrutiny of these types of
10 issues, Dr. Euler?

11 DR. EULER: A. I think that we should be
12 discussing a final document not a draft document. This
13 just leads to intense confusion when you start --

14 Q. So the public should see the final
15 document, not the draft?

16 A. No, no. You can show the public the
17 draft and receive input, but the decisions aren't made
18 until it is final, and that's the point then that you
19 can talk.

20 THE CHAIRMAN: Well, just hold on there
21 for a second, Dr. Euler. I believe we have heard some
22 evidence that before the guidelines were ever
23 finalized.

24 DR. EULER: Right.

25 THE CHAIRMAN: With the moose guidelines,

1 the fish guidelines and maybe many of your 27 other
2 guidelines, they were actually in effect utilized in
3 the field in one form or another and ultimately enacted
4 by way of a formalized guideline at some stage.

5 DR. EULER: Right.

6 THE CHAIRMAN: So I think it is unfair to
7 say that you don't really pay attention to things like
8 this until it is in final form, because often with
9 guidelines in the course of their development you are,
10 in effect, practising under draft; is that not the
11 case?

12 DR. EULER: And searching out the
13 deficiencies, finding what's wrong, correcting those
14 wrongs. It's an iterative process, and that is what we
15 are involved in in this draft document. It's
16 iterative, it's finding out what's wrong, it's
17 straightening things out, putting things in that you
18 missed.

19 THE CHAIRMAN: I guess what the Board is
20 trying to say is that, in the area of guidelines, it's
21 not like a draft report necessarily where you may not
22 take any action until a final report and conclusions
23 are finally reached.

24 In the case of guidelines, it appears to
25 be the Ministry's practice to operate, and often for

1 several years, under one form of draft or another until
2 ultimately at the end of the day - might be 10 years -
3 you end up with a formalized guideline.

4 DR. EULER: Right. Where hopefully you
5 have worked all the problems out.

6 MR. MARTEL: But that's what's happened,
7 that is part of the problem that's developing though,
8 as you develop these guidelines there are practices
9 that aren't consistent across the province and then you
10 have to go back and try to alter it and get everybody
11 operating from the same framework.

12 DR. EULER: Yes. That's exactly what we
13 try to do and it's a long, tough process and we make --
14 you know, we go through various iterations of this all
15 the time.

16 See, to us this is a very normal part of
17 the process. We get criticized all the time for
18 virtually every word that we put down on paper and we
19 try to find our way through to a reasonable compromise.

20 Now, normally something like this would
21 have gone through to maybe, say, a second or a third
22 draft before it got public scrutiny because there are
23 some obvious things that we probably have left out of
24 this, you know, that even we would catch.

25 Like we hadn't thought enough about this

1 issue of aquatic feeding areas in this, another
2 sentence probably would have dealt with that.

3 And it's not very productive to put
4 something out to discussion when there are obvious
5 things missing, and so we would prefer to put it out to
6 discussion at a little later stage when the discussion
7 perhaps would be more helpful, that's all.

8 THE CHAIRMAN: But you put it out for
9 discussion?

10 DR. EULER: Well, we were asked to bring
11 it out at the hearing. See, we wouldn't have --

12 THE CHAIRMAN: So you had a little
13 coercion then.

14 DR. EULER: We have just a little
15 coercion.

16 MR. HYNARD: Mr. Chairman, my tongue is
17 bleeding from having been bitten so many times. I
18 think we are attaching too much importance to the
19 matter. The moose guidelines -- I am a distant
20 observer, I am a unit forester, but I see the moose
21 guidelines as standing.

22 Those moose guidelines have not been
23 altered at all. There was always flexibility in those
24 guidelines for all the reasons that Dr. Euler has
25 explained.

1 I see this interim direction as limiting
2 that flexibility for the reasons that were stated. It
3 is a draft. I presume that if it is approved the clock
4 would start ticking on the date of approval. It's not
5 changing the guidelines, it's not throwing out the
6 provisions of the guidelines, it's just saying that
7 with respect to the harvesting element, we want to
8 limit your flexibility unless you can justify it to the
9 ADM.

10 THE CHAIRMAN: But that's not the
11 interpretation of Dr. Euler.

12 MR. HYNARD: Well, I'm giving you my
13 interpretation.

14 THE CHAIRMAN: Well, okay,, but that's
15 part of the problem we are facing amongst the witnesses
16 right now. You are saying it doesn't change anything
17 with respect to the last paragraph on page 2 of 310.
18 Dr. Euler says that: Well, it may limit and delete the
19 last sentence in that paragraph.

20 I mean, is that not correct, Dr. Euler?

21 DR. EULER: That was my interpretation,
22 Mr. Chairman, that's right.

23 THE CHAIRMAN: Your interpretation is
24 slightly different than Mr. Hynard's.

25 DR. EULER: Slightly different, that's

1 right and it's just a normal part of developing these
2 items.

3 THE CHAIRMAN: Okay. Mr. Hanna, the
4 floor is yours.

5 MR. HANNA: Thank you, Mr. Chairman.

6 THE CHAIRMAN: In fact the floor will be
7 yours for a very short period of time because then we
8 are going to break for lunch.

9 MR. HANNA: I won't repeat the innocence
10 of this question, but it has entered into -- opened a
11 number of questions that I really want to pursue in
12 this. I am happy to continue on with this and try and
13 deal with it before lunch, whichever you prefer.

14 THE CHAIRMAN: Well, why don't we finish
15 off this area before lunch.

16 MR. HANNA: Okay, I will try and do my
17 best.

18 THE CHAIRMAN: Completely.

19 MR. HANNA: Q. Dr. Euler, is the reason
20 you would not want to see the paragraph on page 3--

21 MR. FREIDIN: Page 3 of the...?

22 MR. HANNA: Exhibit 489.

23 Q. --inserted in the guidelines if not
24 replacing the deviation clause, in addition to the
25 deviation clause?

1 DR. EULER: A. Well, yes. I don't want
2 to put that kind of restriction on decisions over a
3 long period of time. I don't think that's the best way
4 to manage moose and harvest timber.

5 Q. Excuse me, I don't see the
6 restriction in that guideline. In fact, that's been a
7 central point of discussion throughout these
8 guidelines, what their status is.

9 All I see here is simply you have to tell
10 the Assistant Deputy Minister if you go beyond that.
11 Does that provide -- or am I interpreting that wrong?

12 A. Well, that is a -- that limits the
13 flexibility because the Assistant Deputy Minister is
14 going to require a very cogent and appropriate reason
15 if you are doing the exceptions as noted.

16 Q. So if I didn't have that, I wouldn't
17 have to have cogents and reasonable reasons; is that
18 fair?

19 A. No, that is not fair, not fair at
20 all. The normal planning process contains the
21 opportunity to reason these things out. What this has
22 done has put the decision level at a higher level in
23 the Ministry than it would have been otherwise.

24 Q. And you would like to see it go right
25 down to the district biologist?

1 A. That's right. And I would like to
2 see them concentrate on their objectives, not the tool.

3 Q. Using their professional judgment?

4 A. That's correct, yes. And I think you
5 can judge then how well we do by saying: How are the
6 moose doing.

7 Q. I keep thinking there is a red flag
8 flashed in front of me when you say that, but I will
9 try and ignore it. Can we just go through this as it
10 stands and see what the interpretation of it is?

11 A. Okay.

12 THE CHAIRMAN: Go through what?

13 MR. HANNA: I just want to make sure I
14 understand what is actually meant here in terms of the
15 size of the harvest cuts and whatever, the actual --
16 what is permissible, what isn't permissible under
17 Exhibit 489.

18 THE CHAIRMAN: Was that not just what we
19 went through with 481?

20 MR. HANNA: Well, that isn't a clear -- I
21 just want to clarify that, sir. It's simply just to
22 make sure I am interpreting properly what's meant there
23 in Exhibit 481.

24 THE CHAIRMAN: Well, I don't think the
25 Board objects to clarification type questions, but to

1 repeat all of the evidence that was introduced in
2 direct when that clause was first discussed, when this
3 exhibit was first introduced, I think is repetitive.

4 So if there is an area you don't
5 understand, then can you not formulate a question to
6 clear up that area?

7 MR. HANNA: Yes.

8 THE CHAIRMAN: I mean, we can't have --
9 Mr. Hanna, you can appreciate every time somebody
10 stands up to cross-examine, we can't have under the
11 guise of cross-examination the repeat of the direct
12 evidence or we will be here forever.

13 MR. HANNA: I appreciate that fully, Mr.
14 Chairman, I will try to avoid that.

15 Q. Based on my calculations, Dr. Euler,
16 it seems to me that it would be acceptable without
17 Assistant Deputy Minister approval to have a clearcut
18 almost one kilometre wide and over three kilometres
19 long; is that correct?

20 DR. EULER: A. That would be very
21 unusual. It's probably theoretically possible.

22 Q. I am simply trying to decide where
23 you have to report a deviation and where you don't have
24 to report a deviation, and that would be the physical
25 dimensions of it?

1 A. That's an extreme case.

2 Q. Well, that's -- the extreme case is
3 the ones we have to report; is that not right?

4 A. Yes.

5 Q. So that's the point at which you
6 would have to start reporting. Anything over one
7 kilometre wide and three kilometres long you would have
8 to start reporting?

9 A. Well, I just -- I'm not familiar with
10 your kilometre dimensions and so I don't know. I just
11 don't, at the moment, know how the hectares translates
12 to kilometres.

13 Q. Well, I can tell you how I came up
14 with the number and maybe you can tell me if I'm
15 interpreting it correctly. The two times rule says
16 that instead of having edge-to-edge cover 400 metres I
17 I can have 800 metres; is that correct?

18 A. Yes.

19 Q. And the size of clearcut two times
20 rule goes 130-260; correct?

21 A. Yes.

22 Q. Well, I simply took a block and
23 figured out what the area of that was and it came up to
24 something about one kilometre by three kilometres?

25 A. Okay. Well, that's fine. I just

1 didn't do that. If you did that and that's what the
2 dimensions are, then I accept that.

3 Q. Good. So that's -- all I am just
4 trying to make sure is I have interpreted it properly,
5 this directive?

6 A. Yes.

7 THE CHAIRMAN: So that is the absolute
8 threshold beyond which you have to comply with the
9 special reporting. Is that your understanding?

10 DR. EULER: Well, you have got to
11 remember this 60-80 per cent as well. See, if you
12 go -- you can exceed those dimensions over here in 20
13 to 40 without reporting it, but it's in the 60 to 80
14 that you begin the reporting process, yes.

15 MR. HANNA: Q. But, Dr. Euler, as long
16 as my clearcuts are less than one kilometre wide and
17 less than three kilometres long I'm in the 60 to 80;
18 correct?

19 DR. EULER: A. Yes.

20 Q. Fine.

21 A. And assuming that your calculations
22 are correct, yes.

23 Q. Now, could we also not have a
24 clearcut that's half a kilometre wide and five
25 kilometres long?

1 A. I think so, based on that, yes.

2 Q. Now, in the other 20 to 40 per cent -
3 and I would suggest to you that when you have a 20 to
4 40 per cent it's the 40 per cent that will probably be
5 operative - we have no limit on the size of the
6 clearcut in that area; is that correct?

7 A. That's correct.

8 Q. So it can be bigger than one
9 kilometre by three kilometres, half a kilometre or five
10 kilometres; it can be virtually as large as you can go,
11 as long it doesn't exceed that 40 per cent?

12 A. Well, from a wildlife point of view
13 there are often other reasons that it would be limited,
14 but from the wildlife point of view and from these
15 guidelines, that's correct.

16 MR. HANNA: Two questions, Mr. Chairman,
17 presuming I get the answers.

18 THE CHAIRMAN: Presuming that we don't
19 interrupt you.

20 MR. HANNA: Q. It's my understanding
21 that in the guidelines, and I have gone through and
22 tried to itemize and I would emphasize here, I'm just
23 dealing again with the boreal forest I haven't gone
24 into the Great Lakes/St. Lawrence Forest, but the
25 boreal forest.

1 I have identified six of the conditions
2 that have, if you will, quantitative measures in them
3 and maybe I can just list them for you and you can just
4 confirm with me that that is the case; 1(a) --

5 MR. FREIDIN: Which exhibit is this,
6 please?

7 MR. HANNA: I'm sorry, 310.

8 MR. FREIDIN: And you're talking about
9 the general guideline section or the area of concern
10 section?

11 MR. HANNA: General guideline section on
12 page (i) and I am going to go through the general
13 guidelines and then the areas of concern guidelines.

14 Q. So I see a specific number in 1(a),
15 1(b), 1(c); correct?

16 DR. EULER: A. Yes.

17 Q. And under the specific areas of
18 concern on page (ii) I see a specific number under
19 2(c), 2(d), and 2(e); is that correct.

20 A. 2(c), 2(d), and 2(e)?

21 Q. Correct.

22 A. Yes.

23 Q. And there are no others that have
24 specific values in them; is that correct?

25 A. Yes, I believe that's correct.

1 Q. Would you agree that in these cases
2 it would be possible to have deviation reporting for
3 those also, because there are specific numbers in them
4 that a deviation rule could be developed?

5 A. Yes, it is possible.

6 Q. Would you agree with me that for the
7 other conditions where they are discretionary and there
8 are no specific directions given, that it would be
9 virtually impossible to have deviation reporting?

10 A. In the same sense, yes, that is true.

11 MR. HANNA: Mr. Chairman, that is my
12 questions on that particular...

13 THE CHAIRMAN: Very well. We will break
14 until 1:30 -- actually we will break until two o'clock.

15 ---Luncheon recess taken at 12:15 p.m.

16 ---On resuming at 2: 05 p.m.

17 THE CHAIRMAN: Thank you, be seated,
18 please.

19 Mr. Hanna, I just wanted to advise that
20 we have been in contact with Mr. Hunter who is going to
21 appear Wednesday night and is expecting to go on
22 Thursday morning, so we are expecting to finish with
23 your examination some time tomorrow.

24 MR. HANNA: Mr. Chairman --

25 THE CHAIRMAN: If necessary we will

1 possibly have to sit later tomorrow to accommodate that
2 if you should not.

3 MR. HANNA: Mr. Chairman, that was on my
4 agenda to speak to also at this point. On this
5 particular witness alone I had - I hate to say it - 90
6 pages of questions.

7 THE CHAIRMAN: We are prepared to deduct
8 any time spent with questions from the Board from
9 whatever your estimates were and we are prepared to
10 start tomorrow early and perhaps to sit late tomorrow,
11 but we made arrangements with other parties, they have
12 got other commitments in both courts and other places,
13 we did it on the basis of estimates of how long you
14 would be, and we kept updates on those estimates from
15 time to time flowing and there has to be some method by
16 which we can schedule other parties and they can't be
17 forced to change commitments made by them constantly as
18 well.

19 MR. HANNA: Mr. Chairman, I fully
20 appreciate that. In fact I am committed on Thursday
21 and Friday anyway, so I in fact have the same sort of
22 scheduling problem.

23 I have gone through this and tried to see
24 what I can put off until later panels and whatever. If
25 the Board -- you know, if we end on Wednesday and that

1 has to be it, well so be it, that will be the case. I
2 certainly would be open if there is any possibility
3 to -- flexibility on that.

4 THE CHAIRMAN: At this point, none. We
5 are going to -- and, again, we don't like to limit
6 cross-examination but in fairness, this panel has been
7 on the stand in terms of cross-examination it will be
8 almost five days by the time you are finished and that
9 is several days longer, you can appreciate, than any
10 other party to date.

11 And that is not to say that your
12 interests or that of your client is different or the
13 same as other parties, they all have different
14 interests, but by the same token the Board has an
15 obligation to be fair with other parties who have made
16 arrangements to attend and continue with their
17 examinations as well.

18 MR. HANNA: Mr. Chairman, while we are on
19 that issue I appreciate fully what you are saying and
20 we will go until Wednesday and that is when we will
21 stop.

22 There is an issue that I had wanted to
23 ask the Board, and this perhaps might be a good time.
24 There are certain questions in the material I have for
25 Dr. Euler which possibly could be dealt with when he

1 comes back in Panel 17 because they deal in fact with
2 some of the later panels, in particular Panel 16, and I
3 don't know if the Board is really sort of -- how do we
4 deal with that issue, I guess is the point.

5 I don't want to ask him about evidence
6 that has not yet been produced before the Board and yet
7 I may want to get his opinion on evidence that other
8 panels are given.

9 THE CHAIRMAN: Well, we have the
10 interrogatory process that you might use with respect
11 to evidence that you think is going to be dealt with in
12 Panel 16. You could ask the questions by way of
13 interrogatory.

14 MR. HANNA: Yes, sir.

15 THE CHAIRMAN: He could reply by way of
16 interrogatory. And we also have the scoping procedures
17 for the panels at which time you could indicate on your
18 statement of issues -- your client's statement of
19 issue, areas that you want to deal with or think should
20 be dealt with and that might offer some guidance to the
21 Ministry in terms of how they'll structure the
22 presentation of say Panel 16 or 17.

23 We are not going to get into a situation
24 where we are going to take every panel and repeat the
25 evidence that that panel has given months earlier.

1 Again, we have got to keep a flow to this case or we
2 are all going to be here until the end of our natural
3 lives.

4 MR. HANNA: Which I don't think any of us
5 wants.

6 THE CHAIRMAN: That's right. So I would
7 suggest that you, you know, look carefully at the
8 questions that you can put off to a later panel. You
9 know that Dr. Euler is going to be reappearing on a
10 later panel, which I might add is an advantage you have
11 in this particular case, it doesn't always occur in the
12 usual case.

13 MR. HANNA: I will do my very best to
14 trim this whatever way I can, sir.

15 THE CHAIRMAN: Thank you.

16 MR. CASSIDY: Mr. Chairman, just in terms
17 of making our own arrangements, is the Board aware of
18 how long Mr. Hunter is expected to be?

19 THE CHAIRMAN: Well, this is the other
20 thing. Mr. Hunter indicated that if we can sit until,
21 he thinks around two o'clock on Thursday and we will
22 again accommodate at least an 8:30 start, he can
23 probably finish on Thursday.

24 He felt that if we rose at one he might
25 have difficulty. So we are going to advise him that he

1 should prepare himself if he can in any way finish on
2 Thursday, and we will try and sit until two and maybe
3 even if necessary start at eight.

4 The point being, that should still allow
5 people enough time to get out to the airport and on
6 that 5:10 flight and, secondly, that would then leave
7 the following week to commence with Ms. Seaborn and
8 then re-examination by Mr. Freidin and with any kind of
9 luck we may finish off this panel by the end of next
10 week.

11 Am I optimistic, Mr. Freidin?

12 MR. FREIDIN: Oh, I hope so. I mean, not
13 that your optimistic, I hope you are right.

14 THE CHAIRMAN: Okay.

15 MS. SEABORN: Mr. Chairman, I can advise
16 the Board, if that schedule does occur and I start at
17 1:00 p.m. on Monday and we sit a bit late on Monday, I
18 should be able to finish--

19 THE CHAIRMAN: Okay.

20 MS. SEABORN: --on that day.

21 THE CHAIRMAN: Okay. And I don't know
22 how long you will be in re-examination, Mr. Freidin. I
23 suppose you don't know how long you will be at this
24 point either?

25 MR. FREIDIN: I won't be more than

1 Tuesday.

2 THE CHAIRMAN: All right. Well, we would
3 like very much - and we'd like to give instructions -
4 that we expect to start Panel 11 next week. If you are
5 going to finish Tuesday, we don't want to waste
6 Wednesday and part of Thursday on not starting Panel
7 11.

8 MR. FREIDIN: Once again, I hear you. If
9 I could just reserve my right to address you on that
10 matter depending on how things go next week.

11 THE CHAIRMAN: Okay. The Board is going
12 to attempt - and this is to all parties - to ensure
13 that where we save some time and where we finish on
14 certain days we just don't lose that time because the
15 next panel or the next witness or the next counsel is
16 not ready to go.

17 This should be no different in that
18 respect than a court of law where you are expected to
19 be ready to go when reached. And, you know, for other
20 reasons it has been necessary on several occasions for
21 us to lose hours and days and, in view of how long this
22 case is expected to take, I think the Board has to be
23 more vigilant in terms of making sure the proceedings
24 continue unabated.

25 Thank you.

1 MR. HANNA: Q. Dr. Euler, regarding this
2 issue of how decisions are reached regarding
3 silvicultural prescriptions that balance timber and
4 wildlife interests, would you agree that there is no
5 unique solution?

6 DR. EULER: A. Oh yes, that's right in
7 virtually every case.

8 Q. So there is a multitude of ways in
9 which both the timber and wildlife objectives could be
10 achieved?

11 A. Almost always, yes.

12 Q. If the biologist were able to say
13 what specific habitat structure she wanted in terms of
14 quality and quantity of forest cover, would it then be
15 possible to explore the best means whereby both the
16 timber and wildlife objectives could be achieved?

17 A. Yes.

18 Q. Who do you feel is in the best
19 position to optimize the silvicultural system for
20 forest management agreement forests, the company
21 forester or the MNR biologist?

22 A. I wouldn't identify either one as
23 being in the best position. I think they both need to
24 work together to deal with those issues.

25 Q. Would company foresters not be able

1 to use their existing sophisticated and quite extensive
2 optimization techniques if MNR biologists said: This
3 is the type and quantity and spacial distribution of
4 each habitat in the forest that we desire?

5 A. Oh yes.

6 Q. But they can't do that today?

7 A. Oh wrong, they certainly can.

8 Q. So the biologist provides to the
9 forester a description of the type, quantity and
10 spacial distribution of the habitat types to the
11 forester?

12 A. Very often they do that, yes.

13 Q. Where is that documented?

14 A. Well, it might be documented in an
15 area of concern, it might be documented in another
16 document completely, or it might not be documented.
17 There is no requirement anywhere in the Ministry to
18 document it in a specific manner.

19 Q. Are you aware of approaches in other
20 jurisdictions in North America at the present time
21 where wildlife habitat factors put into the, if you
22 will, forester's optimization models.

23 A. Well, I'm aware in certain -- in a
24 very general kind of way yes. I don't have a lot of
25 very specific knowledge.

1 Q. You have no experience personally in
2 that type of system?

3 A. No.

4 Q. Dr. Euler, can you turn to Exhibit
5 442.

6 A. Could you tell me the name of it? It
7 really helps if you tell me the name.

8 Q. It's the letter to Ms. Swenarchuk
9 from Ms. Murphy regarding Panel 10, Question 24
10 Interrogatory.

11 A. I don't think I have a copy of the
12 letter.

13 MR. FREIDIN: We have only got one copy.

14 THE CHAIRMAN: All right. Well, we have
15 some up here. You can borrow one here, if you like,
16 Exhibit 442. (handed)

17 MR. FREIDIN: We can advise, Mr.
18 Chairman, there have been a number of discussions
19 between the parties since this letter to which I am not
20 privy, I don't have all the details. I can certainly
21 advise you that Dr. Euler certainly doesn't know what
22 has gone on since this letter either.

23 MR. HANNA: Mr. Chairman, I have no
24 intentions of going through this in detail with Dr.
25 Euler. I appreciate he may not be privy to everything

1 that's going...

2 THE CHAIRMAN: Okay.

3 MR. HANNA: Q. You haven't seen this
4 letter before then, Dr. Euler; is that fair to say?

5 DR. EULER: A. Oh, I did see it once,
6 yes, some time ago.

7 Q. I don't want to go through all the
8 details with it, it is an on-going issue and I am sure
9 it will get resolved one way or another. But the
10 essence of it is, that there isn't a clear definition
11 of clearcuts; is that correct?

12 A. I think so. Based on what I read
13 before, yes, that's true.

14 Q. Now, I believe in the Moose
15 Management Guidelines there is reference to clearcuts;
16 is that correct?

17 A. Yes, there is.

18 Q. And specifically on page (i)
19 condition 1(a) is an example?

20 A. Yes, mm-hmm.

21 Q. Can you tell me what constitutes a
22 contiguous clearcut and where it stops and where it
23 starts?

24 A. No, I just can't give you a clear
25 statement that would apply in every situation. I can't

1 do that.

2 Q. But you did write this?

3 A. Yes, I did.

4 Q. Well, can you perhaps explain to the
5 Board what your concept was behind that word when you
6 wrote it?

7 A. My concept behind the word was to
8 include all of the various activities that come under
9 the heading of clearcut and there are quite a few.

10 Sometimes a clearcut means remove all
11 merchantable timber from a site, it can also mean under
12 other circumstances take all the timber off the site.
13 There are a variety of circumstances out there and the
14 word clearcut is used to describe quite a variety of
15 situations.

16 Q. I am looking at it from the perspective
17 of a biologist trying to interpret your words, your
18 guidelines, and I am trying to look at it from that
19 perspective and say: How would I know where a
20 contiguous clearcut stops and where it starts?

21 What direction would you give me if I was
22 your district biologist?

23 A. Well, I would say: Let's go out on
24 the landscape and let's look at it and let's talk about
25 the parameters of a clearcut.

1 I have been in clearcuts where I said to
2 the forester: Do you mean to tell me this is a
3 clearcut? And he said: Yes, it's a clearcut, because
4 we removed all the merchantable timber. And it depends
5 very much upon the perspective of the person asking the
6 question as well. There is no way that I can say:
7 Here's a definition of a clearcut that is always true.

8 So this is part of our educating our
9 people through our workshop, as we talk about the
10 various ways clearcuts can occur and what's important
11 and what's not important.

12 Q. So if a member of the public wanted
13 to find out what a clearcut is, he would have to go
14 with you out in the field and walk around in the bush?

15 A. If he wanted a comprehensive
16 definition that was true over a wide variety of
17 circumstances, yes.

18 Q. Is there any definition or attempt at
19 a definition of a clearcut in the guidelines?

20 A. Not -- no.

21 Q. How much of a buffer is necessary
22 between two clearcuts to make them non-contiguous?

23 A. That is a question that we leave to
24 the professional on site.

25 Q. So if we go back to our example of

1 the clearcut one metre by -- or excuse me, one
2 kilometre by three kilometres long, we really don't
3 know where the next one starts?

4 A. Well, sometimes we might, sometimes
5 we might not. It's very site-dependent.

6 Q. Could you explain to the Board the
7 most extreme situation that would be permitted under
8 the guidelines in terms of contiguous clearcuts that
9 would not require director's approval?

10 A. The most extreme that would not
11 require director's approval. Well, I suspect it would
12 be a very large clearcut in a jack pine sand flat or
13 where all the trees were merchantable and in the cut
14 they took all of the trees from the area of
15 consideration.

16 Q. So I could have an area that was one
17 kilometre by three kilometres?

18 A. Yes.

19 Q. Or half a kilometre by five
20 kilometres?

21 A. Yes, right.

22 Q. Now, where would the next one start?
23 How far would I have to be before I am into the next
24 one?

25 A. Well, I can't give you a number.

1 Q. Well, in your jack pine example?

2 A. Well, in that case, another one could
3 conceivably start right adjacent to the one that was
4 just finished.

5 Q. Thank you. Dr. Euler, what public
6 notification requirements are there in case of
7 deviations from the guidelines?

8 A. There are no public notification
9 requirements.

10 Q. Thank you. Is the concern about
11 clearcuts and their effect on wildlife a new concern?

12 A. No.

13 MR. MARTEL: Can I go back a question.
14 You asked about deviation from the public, but would
15 that not have to be in the five-year operating plan
16 that would indicate where you intended to cut, and you
17 couldn't go on and on forever. There would have to be
18 some form of notification in the plan to start with;
19 wouldn't there?

20 MR. HYNARD: Well, yes. If you were
21 interested in what was in that plan, then those maps
22 would show exactly what was going to be cut. It may
23 not state -- it would not state in the plan that the
24 guidelines had been exceeded, but it would be obvious.
25 You would look at the map and you would see the area

1 that was being cut. That would be the public
2 notification right there.

3 THE CHAIRMAN: Would the ADM sign off on
4 the plan in a case like that?

5 MR. HYNARD: Well, it is the regional
6 director and the Director of Timber Sales Branch that
7 approve the plan. The district managers --

8 THE CHAIRMAN: The ADM that had approved
9 the deviation, would that appear on the plan in any
10 way?

11 MR. HYNARD: Oh, the ADM. Gee, I'm --
12 you are talking about this interim measure. I really
13 don't know those details.

14 DR. EULER: See, and that's something
15 that we haven't worked out yet either, it's just too
16 early in the process. Whether that deviation would go
17 to the public or not, we just don't know.

18 THE CHAIRMAN: Well, even with the
19 guidelines themselves, the last paragraph of 310, where
20 you may need --

21 DR. EULER: This routinely sanction
22 deviation?

23 THE -CHAIRMAN: Right. Now, when you got
24 to the actual approval of the plan and you fell into
25 that category, for example.

1 DR. EULER: Mm-hmm.

2 THE CHAIRMAN: Would the ADM have to
3 somehow sign that plan?

4 DR. EULER: I don't think he would
5 necessarily have to sign the plan, but his approval
6 would have to be obtained in some tangible way. So
7 there would have to be some piece of paper with his
8 approval on it.

9 THE CHAIRMAN: It may just go to the
10 regional director's office; is that what you are
11 saying?

12 DR. EULER: Well, that's a possibility,
13 yes, in the form of a memo or something, and they could
14 choose: Well, we better put this in the public
15 document, for example.

16 MR. MARTEL: But wouldn't that be -- it
17 has to show up somewhere in the original document
18 though what they are going to cut; does it not?

19 MR. HYNARD: Yes, it does.

20 DR. EULER: What they are going to cut,
21 yes, no question about that. It's just this question
22 of deviation, you see, Mr. Martel, it is --

23 MR. MARTEL: But the point is, do they
24 have to indicate at that time that they are going to
25 deviate from the plan?

1 MR. HYNARD: No, they don't deviate from
2 the plan at all. They can't deviate from the plan
3 without an amendment. If they are deviating from the
4 guidelines, well, the guidelines are in fact flexible,
5 there is no statement they have to make that they are
6 deviating from the guidelines.

7 With this Interim Direction that we were
8 discussing this morning, if it goes through, then it
9 would require the approval of the field ADM. Now, I
10 don't know what the paper trail would be, I presume in
11 the supplementary documentation to the plan, but I'm
12 just speculating.

13 MR. HANNA: Q. Dr. Euler, you were
14 involved in the 1979 review of moose management in
15 Ontario, I believe?

16 DR. EULER: A. Yes.

17 Q. And I believe in the fall of 1979
18 there was a whole series of, if you will, open houses
19 held throughout the area of the moose in Ontario; is
20 that correct?

21 A. Yes, that's correct. I think it was
22 '79.

23 Q. I believe that approximately 7,300
24 people attended it which comprised about 70 per -- or
25 10 per cent of the total moose hunters in the province;

1 is that correct?

2 A. I will accept your figure. I just
3 haven't seen it for some --

4 Q. I am reading directly from the
5 document.

6 A. Okay, sure. Well, then that's
7 correct.

8 Q. Would you say that that indicates a
9 fairly high interest on the part of the public, that
10 level of participation?

11 A. Yes, I would think so.

12 Q. I would like to read you a sentence
13 from the report that I'm -- I don't want to put this as
14 an exhibit, Mr. Chairman, but if you want I can read
15 the title into the record.

16 THE CHAIRMAN: It depends how much you
17 are going to use of it.

18 MR. HANNA: Just one sentence out of it.

19 THE CHAIRMAN: Okay.

20 MR. HANNA: Q. The title of the report,
21 Dr. Euler, you are probably familiar with it, Moose
22 Management in Ontario, a Report of Open House Public
23 Meetings.

24 DR. EULER: A. Yes.

25 Q. I am reading from page 9 of that

1 report in the second column under Habitat and it says:
2 "The quality of moose habitat in Ontario
3 is of great concern to the public. Many
4 people voice concerns that modern
5 clearcutting practices are damaging the
6 moose range."

7 Do you recall that being a major concern
8 of the public at that time?

9 A. Yes.

10 Q. Is it your view that this concern of
11 hunters and other members of the public in terms of
12 harvesting practices still persists?

13 A. Well, people still voice concerns
14 about clearcuts, if that's your question. There is no
15 question that people talk about clearcuts as a concern.

16 Q. I believe in this particular case it
17 was something like 92 per cent of the people expressed
18 that as a major concern?

19 THE CHAIRMAN: Well, I think we are going
20 to have to put it in.

21 MR. FREIDIN: I think if he is going to
22 question Dr. Euler he should at least let Dr. Euler see
23 the report.

24 MR. HANNA: That's fine, Mr. Chairman. I
25 only have one copy. Our photocopier is down and I am

1 into...

2 THE CHAIRMAN: Well, I think we should
3 give it a number though, we are referring to it and you
4 are using it.

5 MR. HANNA: I am happy to give this one
6 to the Board. I can let Dr. Euler see it.

7 MR. FREIDIN: Can you indicate the page
8 that you were quoting from that was read to him?

9 MR. HANNA: I am reading from page 9, and
10 it says:

11 "An increase in efforts to improve timber
12 management harvest practices received the
13 backing of 92 per cent of the public."

14 It makes reference to Table 1(b).

15 MR. FREIDIN: And the first reference?

16 MR. HANNA: It was also in that same
17 column, in that same paragraph.

18 MR. FREIDIN: Thank you.

19 THE CHAIRMAN: All right. That will be
20 Exhibit 517.

21 ---EXHIBIT NO. 517: Report entitled: Moose Management
22 in Ontario, a Report of Open House
Public Meetings dated May, 1980.

23 THE CHAIRMAN: Dr. Euler, would you just
24 review those two passages on page 9 and I guess can
25 confirm if that is your understanding of the reading of

1 the report.

2 DR. EULER: Yes, that's my understanding
3 of reading the report, yes. There are more things in
4 here. For example, it talks about other concerns as
5 well as clearcut, but...

6 THE CHAIRMAN: Well, he is just dealing
7 with the clearcut.

8 DR. EULER: But he is just dealing with
9 that. That's right.

10 THE CHAIRMAN: Okay. I guess we better
11 have the formal title of that report again so I can
12 mark it down.

13 DR. EULER: Moose Management in Ontario
14 is the formal title; it's subtitled a Report of Open
15 House Public Meetings. This is an effort that we
16 conducted about ten years ago to try to be very open
17 with the public about what we were considering.

18 We said to the public: Here are the
19 problems in moose management, what do you think, and we
20 asked for input. We got a tremendous amount of input
21 on moose management, timber moose, the whole gamit, and
22 we received, as Mr. Hanna said, some 73,000 opinions or
23 something, whatever it was.

24 MR. HANNA: 7,300 I think.

25 DR. EULER: 7,300 opinions, and there are

1 probably another 7,300 out there as well. So we
2 amalgamated these opinions as best we could into our
3 program.

4 THE CHAIRMAN: Okay. Is that report
5 dated 1979?

6 MR. HANNA: It's 1980 I believe, Mr.
7 Chairman.

8 DR. EULER: May, 1980 is the date.

9 THE CHAIRMAN: Thank you.

10 DR. EULER: And the open houses took, oh,
11 probably what, a year, a year and a half or something
12 to go through the whole process.

13 THE CHAIRMAN: Thank you.

14 MR. HANNA: Q. Dr. Euler, earlier in
15 your evidence, I believe yesterday, you made reference
16 to the moose -- provincial moose objectives and how
17 they were developed and I believe you indicated that
18 there was extensive public consultation leading up to
19 those moose -- on the basis of those -- excuse me, that
20 there was extensive public consultation with respect to
21 those provincial moose objectives; is that correct?

22 DR. EULER: A. Yes.

23 Q. Can you tell me what groups were
24 asked to review the provincial moose guideline -- the
25 moose objectives?

1 A. Well, I don't have any of that
2 information with me. It has been some 10 years ago and
3 I just don't have the details with me.

4 I would assume, based on the way we
5 normally do things, that it would be the major interest
6 groups like the Hunters & Anglers and the Federation of
7 Ontario Naturalists and the major groups that represent
8 the interested public.

9 I know that the provincial moose
10 biologist at that time had extensive discussions with
11 these people in a number of formats.

12 Q. I am speaking specifically about the
13 160,000 target and the development of that target?

14 A. That would have been part of this
15 whole process of discussion.

16 Q. So it would surprise you if I was to
17 tell you that the Ontario Federation of Anglers &
18 Hunters never had an opportunity to comment on the
19 target?

20 A. Yes, I would be surprised.

21 Q. Thank you. I don't want to go back
22 through the whole deviation issue again, but I would
23 like to just speak to 489 and just get several points
24 of clarification that don't deal with the deviation
25 issue but deal with other interpretation of that, if we

1 could.

2 THE CHAIRMAN: Let's give it a try.

3 MR. HANNA: Q. Specifically, I would
4 like to turn to page 2, paragraph 1 of 489.

5 DR. EULER: A. Where it says principles?

6 MR. HANNA: (handled)

7 THE CHAIRMAN: Thank you.

8 MR. HANNA: Q. Now, can you explain to
9 me, and I believe you may have touchd on this in your
10 evidence. I am not just sure I understand it properly,
11 and that is:

12 "Future management will likely evolve to
13 include more explicit management of a
14 greater range of species."

15 Can you tell me what is meant by that
16 sentence, please?

17 DR. EULER: A. Well, that comes from the
18 fact that right now in Ontario we use the featured
19 species management approach and that approach has both
20 pros and cons and good points and difficult points.

21 And this sentence is trying to say that
22 over the longer term, future management will probably
23 include more explicit management activities for a
24 greater range of species.

25 Q. So it doesn't mean more explicit

1 management for moose, it's more--

2 A. No.

3 Q. --explicit management for other
4 species?

5 A. Yes, trying to look several years
6 down the road we probably would have -- we might go to
7 a different approach than featured species management.
8 For example, we might do more indicator species or
9 multi-species' management.

10 Q. Can you explain to me the role that
11 geographic information systems and computer models play
12 in that?

13 A. Well, they are key tools for future
14 management where the individual manager, one would
15 expect some years from now, would have probably at
16 their disposal a geographic information system,
17 hopefully right at their desk that they can use and
18 hopefully models of wildlife habitat needs and timber
19 supply models that that person can use right at their
20 desk to help with the decisions that are made.

21 Q. And what is intended to be meant
22 there in terms of these computer models that are
23 suggested?

24 A. Well, there is a number of work going
25 on right now where habitat needs of wildlife are built

1 into computer models and those are amalgamated with
2 timber supply models, and it allows the user to make
3 some projections about what might happen given a
4 certain prescription for harvest.

5 Q. So what we are saying is, that's the
6 way of the future, we just aren't there yet?

7 A. Yes.

8 Q. On page 3, the second bullet.

9 A. Yes.

10 Q. I don't understand how interim
11 guidance on flexibility is going to develop greater
12 knowledge through monitoring relationships between
13 population levels and habitat change.

14 I see the advantage of monitoring
15 population levels and et cetera, I don't see how
16 guidance on flexibility is going to help in that
17 respect?

18 A. Neither do I.

19 Q. Can we turn to 492, please, and page
20 5. In actual fact, Dr. Euler, I am going to put that
21 page off. I am going to deal with it later in
22 cross-examination.

23 I am trying to trim things here as we go
24 and that's one I can come back to it. You just might
25 keep in mind I will come back to that.

1 A. Okay.

2 Q. Can we turn to page 7, please?

3 A. Yes.

4 MR. HANNA: I'm sorry, page 7 of Exhibit
5 492. 492 is the training message.

6 MS. BLASTORAH: That's 489.

7 MR. FREIDIN: What page?

8 MR. HANNA: Page 7.

9 Q. Under the response, Dr. Euler, the
10 third paragraph, it appears that the guidelines have
11 been modified here in a sense in that we are now not
12 talking about a return cut when the vegetation is two
13 metres but six metres. Is that a correct
14 interpretation of that?

15 DR. EULER: A. No, I don't think the
16 guidelines have been modified or changed. This is just
17 some more explicit discussion of how a person might
18 deal with that issue. See, it's all premised with an
19 if statement: If late winter habitat is adequate, then
20 there is some more things one can do; if it's
21 inadequate, then there is another course of action that
22 can be taken.

23 Q. That same if statement is in the
24 guidelines also though, except in the guidelines it
25 talks about six metres and here we talk about two

1 metres?

2 A. Well, I don't think it changes the
3 guidelines. I just think it adds this interpretation
4 about the adequacy of winter habitat.

5 Q. Okay. Page 8, please. Can you tell
6 me when the new target is being developed -- will be
7 developed?

8 A. No, I can't.

9 Q. So as soon as possible, could be 10
10 years, 15 years?

11 A. Could be one year.

12 Q. Just a couple of minor details here.
13 Page 9, could you just tell me what the Thompson
14 classification system is?

15 A. That's a bit of jargon that we use to
16 refer to the fact that one of our people some years ago
17 developed a system for classifying aquatic feeding
18 areas and putting them into one, two or three -- Class
19 1, 2 or 3.

20 Q. I don't want to get into that right
21 now, but perhaps -- I haven't seen a copy of that.
22 This is the first time I have even it. I think my
23 client would be interested in seeing that, if that is
24 possible, if it's documented?

25 A. Yes, that system is written down. I

1 don't have it with me, and I haven't seen it myself for
2 some time.

3 Q. I wouldn't want to start into that
4 right now, but if we could get a copy of that then?

5 A. A copy of that would be reasonably
6 available, yes.

7 THE CHAIRMAN: You will undertake to
8 produce one at some point?

9 MR. FREIDIN: Yes.

10 THE CHAIRMAN: Thank you.

11 MR. HANNA: Q. One minor detail here.

12 We have this business of early and late winter
13 concentration areas, and I believe we have already
14 touched on this and you said that it was -- I believe
15 that was our one moose/ten moose business.

16 When can we expect the definition of late
17 and early winter concentration areas to be forthcoming?

18 A. Are you reading that off of this
19 training message?

20 Q. Page 14 of the training message.

21 Yes, I am.

22 A. Well, we don't have a specific date
23 that we will have that finished. The person who has
24 been appointed as the guidelines coordinator will begin
25 to work on it immediately. But when he will finish, I

1 don't know.

2 Q. So the definition of late and early
3 winter concentration areas, using Mr. Tuer's words, is
4 still up in the air?

5 A. Well, I would not use the term up in
6 the air, I think that's a little unfair. I think what
7 we have is more than one way of interpreting it and --
8 but there is only three or four different ways to do
9 it, and what we need to do is just get our act together
10 a little bit better in that particular issue.

11 Q. Dr. Euler, are you familiar with a
12 paper prepared by Mr. Gordon Racey, Mr. John McNicol
13 and a Mr. Timmerman entitled: The Application of the
14 Moose and Deer Habitat Guidelines, Impact on
15 Investment?

16 A. Is that Jerry Racey? If it is Gordon
17 Racey, no; if it's Jerry Racey, yes.

18 Q. I saw Gordon Racey in other places in
19 the proceeding I presume, but perhaps it is Jerry
20 Racey?

21 A. Yes, and he gave it in Thunder Bay
22 last fall. If that's the paper, then I am.

23 MR. HANNA: Mr. Chairman, I would like to
24 enter this as an exhibit.

25 THE CHAIRMAN: Exhibit 518.

1 ---EXHIBIT NO. 518: Paper prepared by Mr. Gordon
2 Racey, Mr. John McNicol and Mr.
3 Timmerman entitled: The
4 Application of the Moose and Deer
5 Habitat Guidelines, Impact on
6 Investment.

7 MR. HANNA: Q. Now, I found this paper
8 to be -- to provide a fairly comprehensive review of
9 the guidelines. Would you say that that's the case
10 also in terms of their application?

11 DR. EULER: A. Well, it has been a
12 little while since I have read it. When I read it I
13 felt that it was a reasonable review, yes. It has been
14 some time, however.

15 MR. HANNA: Mr. Chairman, can I suggest
16 that we number the pages on this because the first two
17 pages are not numbered. I would suggest the first
18 page, which is the abstract, be (i) and the next page
19 which is the introduction on it be page 1.

20 I believe at the end -- also the figures
21 at the end are not numbered. I believe the references
22 are page 29 and then we start with the figures. If we
23 can start with Figure 1 being page 30, 31, 32 and 33.

24 THE CHAIRMAN: I have a 34. That's
25 because I missed 31, sorry.

26 MR. HANNA: Q. On page (i), Dr. Euler,
27 the abstract, they identify five major issues

1 surrounding the application of the guidelines; do they
2 not?

3 DR. EULER: A. Yes, they do.

4 Q. On page 1, the second paragraph,
5 could you read that paragraph, please?

6 A. "The wide diversity of sites,
7 management objectives and resource
8 demands in the boreal and Great Lakes-St.
9 Lawrence forest region of Ontario has led
10 to a wide variety of examples of how the
11 guidelines have been applied. At the
12 same time, the growing demand for low
13 cost wood, fibre, and increased demand
14 for both consumptive and non-consumptive
15 wildlife has increased the level of
16 difficulty in reaching an agreement on
17 the application of guidelines which is
18 satisfactory to both wildlife and timber
19 management."

20 Q. Do you interpret that statement as
21 suggesting that there is an increasing level of
22 conflict between foresters and biologists?

23 A. That appears to be what the authors
24 have said.

25 MR. HANNA: Mr. Chairman, I think we know

1 who the authors are. I believe Mr. McNicol has
2 appeared as -- or Dr. McNicol has appeared as a witness
3 before, and I think is known as having some experience
4 in applying these guidelines.

5 Q. Is that not correct, Dr. Euler?

6 A. Yes.

7 Q. Can we turn to page 3. The first
8 paragraph there, it says:

9 "The broad scales addressed by applying
10 the moose habitat guidelines as a general
11 range management strategy. This means
12 the guidelines are always applied but the
13 level of flexibility increases as the
14 inherent productivity of the land base
15 decreases."

16 Did you make reference to that in your
17 evidence?

18 A. I don't think so. I don't recall
19 that. If I did I have forgotten it.

20 Q. Perhaps you could just explain to us
21 what your interpretation is of that sentence?

22 A. Well, there are certain parts of the
23 province where moose productivity is relatively low,
24 for one reason or another they just never occur on
25 those pieces of land at a level that is very dense and,

1 on those areas, there is more flexibility in applying
2 the guidelines than on the areas where there is high
3 potential for moose.

4 Q. You're familiar with the prime site
5 concept?

6 A. Yes.

7 Q. Would the prime site be having
8 inherent productivity that is high or low?

9 A. I don't quite follow you.

10 Q. Well, I am looking specifically at
11 that sentence and it talks about inherent productivity
12 of the land base.

13 A. Yes.

14 Q. I am asking you, are prime sites, do
15 they have a high inherent productivity or a low
16 inherent productivity?

17 A. Well, they would tend to have a high
18 inherent productivity.

19 MR. HYNARD: A. Mr. Hynard, prime sites
20 is a forestry term really and in Ontario it's used in a
21 forestry context. And in that case, productivity is
22 only one of the factors that is used to determine
23 primeness of site.

24 Q. Proximity to mill and et cetera, et
25 cetera, yes.

1 A. (nodding affirmatively)

2 Q. But you wouldn't have a prime site if
3 it was on bare rock?

4 A. Well, no, not bare rock.

5 Q. The following pages, Dr. Euler, 3
6 through to 10 I believe are simply just a restatement
7 of the guidelines, so there is no need to go through
8 those. I would like to turn to page 11, if we could.

9 DR. EULER: A. Yes.

10 Q. And the second paragraph there
11 under -- or the second sentence excuse me, under the --
12 I'll start again.

13 Let me read the first two sentences, that
14 is probably the easiest thing to do. I am reading off
15 of page 11 paragraph 1:

16 "At times there has been variation in the
17 vigor with which the moose habitat
18 guidelines have been applied. The
19 variation is attributed to the personal
20 styles and experience of resource
21 managers in different specific
22 site-related objectives."

23 Now, you've given us evidence that there
24 is this problem with experience and you are trying to
25 deal with that through your training message. What

1 about this issue of personal styles, I haven't heard
2 you mention that before?

3 DR. EULER: A. Well, no, I haven't
4 mentioned that before. In my opinion, obviously people
5 are different, obviously they approach their
6 problems in their job with a somewhat different style
7 and that can result in somewhat different
8 recommendations.

9 I think that is just normal human
10 behaviour and I don't think it's particularly
11 significant.

12 Q. Is that your reading of these
13 authors -- of the authors of this paper also?

14 A. Yes.

15 THE CHAIRMAN: Well, it's hard to
16 speculate what they meant. He gave you his opinion,
17 that is enough.

18 MR. HANNA: Q. Now, I believe Exhibit
19 482 that is behind you there on the board is the
20 example of -- Exhibit 482 on the board behind you, is
21 an example of, if you will, the ideal moose habitat in
22 fairly quantitative terms; is that correct?

23 A. Yes, in good -- it's ideal habitat in
24 the best range. Yes, in quantitative terms, yes.

25 Q. Now, I believe these authors go

1 through a fairly extensive analysis of the boreal
2 forest and the types of habitats that are suitable as
3 moose habitat, and I believe on page 30 they summarize
4 their analysis?

5 A. Yes, they do, using the forest
6 ecological classification system.

7 Q. Eco-system classification?

8 A. Eco-system classification. Sorry,
9 FEC.

10 Q. Now, I look at that diagram and I
11 see --

12 THE CHAIRMAN: Do you see a moose in
13 there?

14 DR. EULER: It's the head of a calf
15 moose, you see, facing left.

16 MR. HANNA: I didn't until now, Mr.
17 Chairman.

18 MR. FREIDIN: Mr. Chairman, if I might,
19 just for ease of reading the transcript. If Mr. Hanna
20 is going to go back between two exhibits -- that if you
21 go back to an exhibit, you could indicate that we are
22 looking at a certain page of a certain exhibit,
23 otherwise we're going to be reading a few pages and
24 find out that we are looking at the the wrong document.

25 THE CHAIRMAN: Well, this is back to

1 Exhibit 518, page 3.

2 MR. HANNA: When I get tired, Mr.
3 Chairman, I'm afraid my discipline starts to let down
4 on me. I apologize.

5 Q. It's fair to say, Dr. Euler, looking
6 at that figure that the great majority of forest types
7 are suitable moose habitat and, in fact, are used by
8 moose?

9 MRS. KOVEN: Excuse me, Mr. Hanna. This
10 doesn't make any sense to me, these numbers. Do you
11 want to just explain quickly.

12 MR. HANNA: Sure.

13 Q. Actually I think perhaps -- who
14 would be the expert on the panel in terms of the forest
15 eco-system classification system; Mr. Greenwood?

16 MR. GREENWOOD: A. I've had experience
17 with it. I don't have the document at hand though, so
18 I couldn't explain it.

19 Q. I think for the Board's reference we
20 don't need to go through what each of the 38 is. I
21 think Ms. Koven --

22 MS. KOVEN: No, I just want to know what
23 the numbers are representing on this.

24 MR. HANNA: Yes.

25 DR. EULER: Let me try, in the interest

1 of trying to go quickly. Each of those numbers
2 represents a particular site in the forest with a
3 particular kind of vegetation that characteristically
4 grows on that site.

5 So if you went to Site No. 23, on average
6 you would find a certain kind of tree growing there
7 most of the time and certain little tree, shrubs and so
8 on growing there.

9 MRS. KOVEN: So this chart is showing
10 that 23 is not a good moose habitat or can't --

11 DR. EULER: Well, unfortunately, it's
12 reasonably complicated and what Mr. Racey and the
13 others have done is they have -- see, you have to look
14 at a combination of numbers and then the little
15 diagrams at the bottom.

16 So, for example, Sites 2 and 3 are useful
17 for moose to feed in the summertime, okay, and early
18 winter habitat are represented by those numbers that
19 fall within those angled dotted lines; late winter
20 habitat fall within this stippled figure; and something
21 that he is calling conditional cover falls within NO.
22 31, 11, 19, 34, 36, 35 and so on.

23 So if a moose is looking for early winter
24 habitat, he would search for a site with the number 24,
25 14, 15, and so on. This is intended to give the moose

1 a guide about where to go, you see.

2 THE CHAIRMAN: And if he's out in 22 he
3 is what, standing on rock or something?

4 DR. EULER: He's in trouble because he's
5 not home. Yeah.

6 Now, if you look at the sides of the
7 diagrams, the gradient on the left is from relatively
8 dry to relatively wet. The bottom refers to the
9 nutrient on the site. So a poor wet site would be in
10 the lower left corner; a dry rich site would be in the
11 upper right corner.

12 MR. GREENWOOD: Mrs. Koven, those numbers
13 are simply keys to vegetation relationships which give
14 an indication of site and the site indication on this
15 chart is plotted to give you the relationship to dry
16 versus wet site; rich to poor site.

17 MRS. KOVEN: And they represent all
18 different types of sites in the province?

19 MR. GREEN: They represent -- no, this
20 particular forest eco-system classification is
21 representative of the northcentral region and so,
22 therefore, it's vegetation relationships within that
23 region.

24 So you can go to a key, to a document I
25 think that was introduced in Panel 7, and it will tell

1 you that No. 3 represents a certain vegetation
2 relationship. So they are key to a vegetation
3 relationship that is all.

4 MR. HANNA: Q. So, Dr. Euler, if I was
5 able to give to the forester and say I need some summer
6 feeding grounds and I need "x" amount of summer feeding
7 grounds to sustain my moose population, I need some
8 late winter concentration areas, some early winter
9 concentration areas some additional cover, and I was to
10 give that, I could take this and it would be in the
11 language that the forester would understand?

12 A. Oh yes, yes. It's excellent, it's a
13 nice piece of work.

14 Q. So it will -- it almost bridges the
15 gap, if you will, between --

16 A. Mm-hmm, yes. It's a very nice piece
17 of work and we are glad these guys are doing it and as
18 they develop it this may be something that becomes
19 operational. This is some of the first attempts we've
20 had to do this and we are very optimistic about its
21 value in the future.

22 Q. Can we turn to page 15 again of
23 Exhibit 518. Now, they are speaking here of the matter
24 of normalization. They are speaking of the term from a
25 biological point of view.

1 It is a term that has been introduced
2 into this hearing I believe by the foresters, but it
3 also has biological application; is that correct?

4 A. My understanding that this term is
5 used in this context in the forestry context.

6 Q. Well, let's use it in the forestry
7 context. Now, it seems to me they are making an
8 argument for normalization of the forest from a moose
9 management point of view; is that correct?

10 A. Well, they are certainly making an
11 argument for normalization of the forest, I would say
12 from the standpoint of the use of that term, in
13 forestry not in moose.

14 Q. Well, maybe I am missing the point of
15 this section. If you can clarify it for me.

16 MR. FREIDIN: Which section were we
17 referring to?

18 MR. HANNA: The section under
19 normalization. It continues on from page 15 most of
20 the way down page 18.

21 Q. Perhaps I can take you back to the
22 abstract then.

23 MR. FREIDIN: Excuse me, Mr. Chairman.
24 If Mr. Hanna wants to examine the witness on three or
25 four pages that is before him, I might just point out,

1 Dr. Euler, that if you feel that you have to read the
2 four pages before you feel comfortable answering, you
3 can do that.

4 DR. EULER: Okay, thank you.

5 MR. HANNA: I am wondering in the
6 interest of time, I am going to see if there is --
7 perhaps give Dr. Euler time to review this. I was
8 thinking that he probably would have read this quite
9 honestly, Mr. Chairman, seeing it was prepared by
10 members of the Ministry and it was only done last
11 November.

12 THE CHAIRMAN: Well, to expect witnesses
13 to remember pages from specific reports given the
14 amount that these witnesses would probably read in a
15 given year, I think is a bit optimistic.

16 MR. HANNA: It is directed specifically
17 to his evidence, but I appreciate what you are saying.

18 THE CHAIRMAN: Well, do you remember what
19 is on the third page of the report which you got 80 per
20 cent on?

21 MR. HANNA: No, and Robert really
22 remember what happened in June, July or whatever in
23 1980 whatever. I appreciate that, Mr. Chairman.

24 THE CHAIRMAN: Why don't we take the
25 afternoon break at this point and you can read it

1 during the break.

2 DR. EULER: Okay. I will be pleased to
3 do that.

4 MR. FREIDIN: Is there particular
5 sections that he should read?

6 MR. HANNA: Well, he doesn't have to read
7 the guidelines, I think he's familiar with those. It's
8 primarily -- I can give you a list of the pages that I
9 will be referring to. I am going to be referring to
10 the issue on normalization, cut size --

11 DR. EULER: What page is that?

12 MR. HANNA: Well, these are under
13 headings. Well, I can give you the actual pages.

14 DR. EULER: So can we see it in the index
15 then?

16 MR. HANNA: Page 18. Pages 18 to 20
17 actually. Page 21, page 24.

18 MR. FREIDIN: Moving on in relation to
19 access or something else? There is a lot there to read
20 and digest.

21 DR. EULER: See, I did read this paper,
22 but it has been a long time and I need to read it again
23 to refresh my memory. But this will not be new to me,
24 it's just a question of remembering what was said and I
25 talked with Jerry at the time and I don't think it's a

1 too big problem.

2 If I do have a few minutes though to
3 re-read it and remind myself of some of those things,
4 that would be helpful.

5 MR. HANNA: Its page 21 with respect to
6 the return cut, page 24, page 25, those are the pages I
7 will be referring to.

8 THE CHAIRMAN: Okay. I think we will
9 break for a half hour and you can read those pages
10 during that time.

11 Do you have any more exhibits you are
12 going to be submitting that the witnesses may not have
13 read on which you will be questioning them?

14 MR. HANNA: Mr. Chairman, can I respond
15 to that after the break and I will go through and check
16 and see if there is another one.

17 THE CHAIRMAN: Okay. I think in the
18 interests of time any ones that require more than three
19 or four paragraphs or a page, you should organize them
20 so that he can read them overnight, or any of the other
21 witnesses, and we will deal with them tomorrow.

22 MR. HANNA: I will try and do that in
23 future, Mr. Chairman.

24 THE CHAIRMAN: We'll be back in a half
25 hour.

1 ---Recess taken at 3:05 p.m.

2 ----On resuming at 3:50 p.m.

3 THE CHAIRMAN: Thank you. Be seated,
4 please.

5 Mr. Hanna, just before we continue,
6 during the break the panel reviewed some of the
7 cross-examination that has been ongoing for the last
8 couple of days and, in the spirit of trying to assist
9 you in this endeavour, because you did indicate at the
10 outset of your cross-examination that you were not as
11 experienced perhaps as some of the counsel doing this
12 kind of thing, and the Board would like to assist where
13 we can, we would like to get a feeling of where you are
14 going in this cross-examination.

15 By that I mean, we are not a hundred per
16 cent sure of what your client's interest is in terms of
17 the evidence given by this panel and any of the
18 concerns that your client might have with respect to
19 that evidence.

20 You have been reviewing the guidelines
21 and you have been reviewing documentation and we
22 haven't gotten the sense, up to this point, of exactly
23 what you are taking issue with in terms of the evidence
24 produced by this panel and what the concerns are of
25 your client with respect thereto.

1 And by that I mean -- and perhaps we can
2 phrase it in this way: We have heard some evidence,
3 for instance, about how targets for the number of moose
4 have been set by the Ministry and how those targets can
5 be obtained and a couple of the ways in which those
6 targets can be met is either by control of hunting on
7 the one hand, or the provision of moose habitat on the
8 other. And we haven't got the sense of what your
9 client is objecting to, either there is not enough
10 moose habitat being produced or the controls on
11 hunters, for instance, are too restrictive, or that the
12 way in which these decisions are made or reached are
13 not defined enough, et cetera.

14 We are losing the focus, to some extent,
15 of where your client is going in this
16 cross-examination.

17 And I think for it to be beneficial to
18 all of us, we are taking down notes of the various
19 points you are making and the various answers provided
20 by the witnesses, but we would like some direction on
21 the bigger picture, where you are headed in this
22 cross-examination, because I think it will be much more
23 helpful to us in terms of trying to digest the various
24 points that have been raised by you and the various
25 witnesses in answering your questions.

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20 by the witnesses, but we would like some direction on
21 the bigger picture, where you are headed in this
22 cross-examination, because I think it will be much more
23 helpful to us in terms of trying to digest the various
24 points that have been raised by you and the various
25 witnesses in answering your questions.

1 MR. HANNA: Well, I appreciate the
2 opportunity, Mr. Chairman, and I do appreciate the
3 opportunity -- or your direction in trying to help you
4 in that respect and I will do my best impromptu here as
5 I can.

6 I am sure, as you can appreciate, a lot
7 of this I would have liked to had an opening address,
8 if you will, and to be able to set out where I see our
9 whole case going and that, unfortunately, wasn't my
10 opportunity in the situation that I was faced with.

11 THE CHAIRMAN: Well, perhaps at this
12 point you could succinctly state, if you can, at least
13 with respect to this panel, almost in the form of an
14 opening address as to where you are going or intend to
15 go.

16 MR. HANNA: You will excuse me if I am
17 not perfectly prepared for this, but I certainly --

18 THE CHAIRMAN: We can understand that,
19 but you can understand our dilemma.

20 MR. HANNA: Absolutely.

21 THE CHAIRMAN: We are coming -- you know,
22 we are coming at it from the point of view of listening
23 carefully to the questions, listening to the answers
24 and not fully understanding exactly where you are
25 headed. And it sort of makes a big difference to us,

1 in terms of trying to assess an application, to have
2 firmly in mind where the various parties' interests are
3 and what they are questioning and what they are
4 agreeing with. And we are not sure where exactly your
5 client stands on some of these issues.

6 MR. HANNA: I had wanted, in fact, to
7 start off my cross-examination with something of that
8 nature, but I really felt it was inappropriate because
9 of the nature of things. But I do appreciate this
10 opportunity, I will give you my best shot at it at this
11 time.

12 The concerns of the Ontario Federation of
13 Anglers & Hunters revolve around the need to have the
14 public and all members of the public -- not just
15 hunters and anglers, but all members of the public, and
16 that includes the forest companies, what other
17 interested parties might be involved, having an open
18 opportunity in ensuring through that opportunity that
19 the views and thoughts are carried forward in the plan.

20 In other words, the public will is
21 reflected in the plans rather than perhaps the will of
22 a limited number of people using professional judgment.

23 And I would say to you that I have spoken
24 to the Federation at length on the matter of what they
25 can expect out of this hearing, and I have tried to

1 explain to them the difference between a class
2 environmental assessment and an individual
3 environmental assessment.

4 And the way that I have explained it to
5 them, in my view - and I realize that may not be the
6 view of the Board - but in my view, is that a class
7 environmental assessment is essentially setting up a
8 planning process, setting out how one goes about making
9 decisions. Here is how we go about making the
10 decision, here are the factors that we will be
11 considered, here is how we will incorporate those
12 factors to arrive at a decision.

13 This panel, harvesting, is setting out
14 the impacts associated with harvesting and I look at
15 this panel in the context of a class environmental
16 assessment and what we can hope to accomplish in a
17 generic way, which is what I see the class
18 environmental assessment being, that can help us deal
19 with harvesting impacts in the future when we deal with
20 individual timber management plans.

21 So I am looking at it from that point of
22 view and saying: What information, what, if you will,
23 evidence should the public be given in arriving at, in
24 this particular case, an assessment of harvesting
25 impacts and arriving at decisions in terms of what is

1 acceptable and what is not acceptable in terms of
2 harvesting impacts. And I speak impacts there in terms
3 of environment and in the broadest context as is
4 defined in the Act.

5 There are a whole series of generic
6 issues that the Environmental Assessment Act is faced
7 with, and I don't need to go through those and I really
8 don't want to go through those in detail at the present
9 time, but there are things such as scope, level of
10 detail, time horizon, how you do tradeoffs, a whole
11 variety of issues, and I am sure this Board has faced
12 on numerous occasions.

13 One of the advantages of this sort of a
14 hearing is to try to deal with as many of those issues
15 at a generic level as you possibly can in a concise and
16 efficient way so that you don't have to go back and
17 revisit those issues repeatedly in the future.

18 That is, if you will, the essence of the
19 procedural element of my client's interest. My client
20 is interested in not simply putting forward, if you
21 will, an argument for more moose or more fish, the
22 argument they are putting forward is for a fair and
23 open system that allows for reasonable public decisions
24 to be made.

25 And I can say to you without any doubt

1 the Federation of Anglers & Hunters is not saying we
2 should have moose above everything else, we should have
3 fish, we should have red-shouldered hawks, we are
4 saying we have to make those decisions in a reasonable
5 and open and democratic way.

6 And the purpose of the cross-examination
7 of this particular panel and the cross-examination
8 particularly with Mr. Hynard and with Dr. Euler -- Mr.
9 Hynard's -- the focus of our cross-examination of Mr.
10 Hynard was to look at how these decisions are made.

11 Decisions are being made by the forester,
12 the unit forester, he gets all the input and whatever,
13 but how do you actually put all those pieces together.
14 What information do you have, what tools do you use,
15 how do they all get pulled together. And, most
16 importantly, are they accountable and traceable to the
17 public.

18 With Dr. Euler's evidence, I can say that
19 my client has had very intense internal discussions
20 with respect to whether to support or not to support
21 the Moose Habitat Guidelines. And I can say to you at
22 this point that they do not support the Moose Habitat
23 Guidelines, and the reason they don't support the Moose
24 Habitat Guidelines is because they do not provide those
25 elements that I set out in terms of being explicit and

1 traceable but perhaps, more importantly, is that they
2 lead to, in our view, a great deal of unnecessary
3 friction between foresters and biologists.

4 They do not give us a guarantee in terms
5 of what the future might look like and we think there
6 is a better way; and the better way that we have
7 adopted as a Federation is a habitat supply analysis
8 approach. And I would say to you, that's a
9 fundamentally different approach than what the Ministry
10 is currently using.

11 THE CHAIRMAN: Okay. And you will be
12 giving evidence of that in your side of the case. We
13 don't want evidence on any of that now.

14 MR. HANNA: Absolutely. The only part of
15 our cross-examination that deals with that is, as you
16 know, in Dr. Euler's evidence-in-chief he has spoken to
17 Dr. Baskerville and I wish to get clarification of what
18 he has said in terms of Dr. Baskerville's work and his
19 professional judgment for that opinion.

20 With respect to the other panelists, Mr.
21 Oldford and Mr. Greenwood, the Federation is concerned
22 about more than just fish and wildlife, it's concerned
23 about the environment. And I think it's very clear in
24 the goals and objectives of the Federation that it's
25 interested in the conservation of natural resources.

1 And we see one of the natural resources that we have
2 concerns about is our forests.

3 Mr. Oldford and Mr. Greenwood have
4 brought forth evidence in terms of the activities and
5 impacts on the forest estate associated with those
6 elements and so we are interested in that respect in
7 ensuring that our natural resources in that broad sense
8 are taken care of.

9 Dr. Allin, I think it is fairly clear, I
10 can say that we do adopt and we do support the Fish
11 Habitat Guidelines. We see a fundamental difference
12 between fish management and moose management with this
13 particular application. We believe the Fish Habitat
14 Guidelines by and large do the job. It's a matter of,
15 if you will, fine tuning.

16 Mr. Clark's evidence -- our concern with
17 Mr. Clark's evidence is one of traceability and
18 accountability. Mr. Clark has brought forward evidence
19 in terms of the socio-economic impacts of harvesting.
20 We feel that there are better methods to deal with
21 socio-economic assessment than what the Ministry is
22 proposing. We feel they are administratively
23 efficient, we feel they are more transparent to the
24 public and that they will overall reduce the conflict
25 between the forest industry and the government and

1 conservationists.

2 And I can say to you that our overall
3 objective in this hearing is to lead to the efficient
4 and, if you will, harmonious management of our
5 provincial resources. And we feel that the best way to
6 do that is by making the tradeoffs explicit, by laying
7 everything on the table and coming to those tradeoffs
8 in a reasonable and open way that all members of the
9 public have access to.

10 So that's where I am going, Mr. Chairman.
11 I am looking at trying in this panel to, if you will,
12 set up -- make sure those elements of the planning
13 process are there, such that when we implement what
14 comes out of this hearing that we have, if you will, a
15 system that works. Does that help?

16 THE CHAIRMAN: Well, it certainly
17 provides an overview for the Board as to where you are
18 intending to go.

19 I think the only thing you might consider
20 at this point, having those objectives in mind, is to
21 consider whether by your questioning of the specific
22 material you are questioning on you are reaching those
23 objectives.

24 I am not saying you aren't, I am just
25 saying that I think you should tie in your questioning

1 as best you can to the objectives you have stated, if
2 those are your objectives.

3 MR. HANNA: Well, it's going to be hard
4 to do it right now.

5 THE CHAIRMAN: No, no, I can understand
6 that and appreciate that. All we are saying is, is
7 that when you take the questions that were put forward
8 today - I am not saying they were disjointed - but they
9 covered a broad range of issues and it was difficult
10 for the Board at that point to tie in those broad range
11 of issues to the objectives that you have just
12 enunciated.

13 It may be easier in the remainder of the
14 cross-examination to do so, because we now know where
15 you are headed and where you intend to head.

16 MR. HANNA: Just to give you an
17 capsulation of where I thought I had gone this morning.
18 My intention of asking the questions of Dr. Euler was
19 to go through and to examine the difficulties in
20 applying the guidelines and what sort of pitfalls might
21 be in them and how really setting, as I am sure you
22 appreciate, the groundwork for proposing to the Board
23 there might be a better way.

24 And so I wanted to go through the
25 guidelines and see what sort of weaknesses might be in

1 them, and that was the purpose and that indeed is the
2 purpose I have brought forward, the paper that I wish
3 to proceed with, the Racey paper, because it sets out
4 very specifically, if you will, an evaluation of the
5 guidelines and where we want to go.

6 I don't think there is any question
7 between the Ministry and the Federation in terms of
8 where we want to go. I think it's more a matter of how
9 we get there.

10 THE CHAIRMAN: Okay.

11 MR. HANNA: I will try to do my best
12 to -- I'm sure you appreciate, there is a problem with
13 having an expert in this role is sometimes hard to put
14 myself in the position of the Board and appreciate, if
15 you will, where you are starting from and where I am
16 starting from.

17 THE CHAIRMAN: Well, from the Board's
18 perspective, we want to make the most efficient use of
19 the time we have available for all questioners and we
20 find it helpful - and this is as much for other parties
21 as yourself - to have an idea when the
22 cross-examinations are entered upon as to where you
23 might be headed.

24 MR. HANNA: Mr. Chairman, the procedural
25 issue now. I am quite prepared at the beginning of

1 cross-examination, at least at the start of the topic,
2 to give you a summary of where I am going.

3 THE CHAIRMAN: Well, no, I don't think it
4 has to be done with every single topic. I mean, you
5 know, we can't have sort of addresses with respect to
6 every single topic, but an overview such as you have
7 just given I think is helpful because it puts the
8 context of your cross-examination into better focus for
9 the Board.

10 MR. HANNA: I will attempt to do that in
11 the future, Mr. Chairman.

12 Q. Dr. Euler, I would like to go through
13 Exhibit 418 with you, if I may?

14 DR. EULER: A. Yes.

15 MR. HANNA: Mr. Chairman, the reason I
16 would like to go through the Racey paper is it
17 provides, if you will, a summary of the issues by I
18 believe three authors who, if not next to Dr. Euler,
19 perhaps as intimate a knowledge of the guidelines as
20 anyone.

21 Q. Dr. Euler, can we turn to page (i),
22 please, the abstract?

23 DR. EULER: A. Yes.

24 Q. And I believe they indicate there
25 there are five major issues surrounding the application

1 of the guidelines?

2 A. Yes.

3 Q. Do you have any disagreement with
4 those issues?

5 A. No. No, I don't have any problem
6 with that.

7 Q. And they propose immutably following
8 that in the sentence that says:

9 "The solution to these issues..."

10 These five issues:

11 "...lies in normalizing the age structure
12 of the forest on a suitable scale."

13 Now, do you agree with that solution?

14 A. Well, I agree that that is a good
15 solution, yes, in the sense that if it can implemented
16 it will be a good solution. I think there are some
17 problems with it, but it is a good way to solve the
18 problems.

19 Q. Can we turn to page 15, please. What
20 I would like to do, Dr. Euler, is I believe the paper
21 is structured such that each of the issues is dealt
22 with sequentially through the paper; is that correct?

23 A. Yes, that's correct.

24 Q. I would just like to go through each
25 one of those issues and just get some appreciation of

1 why they have made these comments and what their
2 justification is for that position.

3 A. Yes, okay.

4 Q. Now, the first paragraph there is
5 describing, if you will, past practices, it is
6 summarized in the sense where it says: "In essence..."
7 Do you see that sentence?

8 A. Yes.

9 Q. It says:
10 "In essence we are letting our future be
11 dictated by the mistakes of the past
12 rather than taking positive steps to
13 correct what is now an unbalanced
14 forest."

15 A. Yes.

16 Q. Can you explain to the Board what is
17 meant by that or what your interpretation of that is,
18 excuse me?

19 A. Well, see, it is all tied in. The
20 authors are saying that we have a forest that is not
21 normal and it is not normal because of mistakes in the
22 past and the authors are saying -- they are making a
23 statement:

24 "...we are letting our future be dictated
25 by mistakes of the past rather than

1 taking positive steps to correct what is
2 now an unbalanced forest."

3 Q. Right. And they continue on with the
4 second sentence after that with:

5 "As long as large tracts of timber reach
6 merchantable status at approximately the
7 same time, conflict between the interests
8 of timber management and wildlife
9 management can be expected."

10 Do you agree with that?

11 A. I think their statement is a little
12 too bald and a little too all encompassing. I don't
13 think it's quite that black a picture.

14 Certainly having large tracts of timber
15 reach unmerchantable status at approximately the same
16 stand makes for a difficult problem, there is no
17 question. I think they have painted it a little
18 blacker than it really is.

19 Q. And their suggestion is, following on
20 after that:

21 "Conversely, the greater the diversity in
22 distribution of areas ready for the
23 harvest the less the possibility for
24 conflict over the guideline application."

25 Would you agree with that?

1 A. Yes, basically.

2 Q. So if we can get there it's a good
3 way to go, it's just a matter of whether it's feasible?

4 A. Yeah, whether you can do it in the
5 real world. It's a wonderful idea, but whether you can
6 get there because it is tremendously costly.

7 MR. MARTEL: Is it probable, can you do
8 it?

9 DR. EULER: Well, Mr. Martel, what -- if
10 you wouldn't mind, could one of the foresters talk to
11 that, because really this isn't my area. I think
12 somebody else should talk to normalization of the
13 forest, what it means, and so on.

14 MR. HANNA: Mr. Martel, just before we
15 go, can I just continue to go that way I just want to
16 just clarify.

17 Q. The authors of this paper, Dr. Euler,
18 Racey, McNicol and Timmerman, can you tell me which of
19 those are biologists?

20 DR. EULER: A. They all have degrees in
21 biology.

22 Q. Thank you.

23 A. John McNicol has a degree in forestry
24 as well.

25 MR. HYNARD: A. Well, you are looking

1 for an expansion from a forester on this idea of
2 normalization of the forest and the difficulties
3 encountered in it, I understand.

4 MR. MARTEL: I want to know if you can in
5 fact do it.

6 MR. HYNARD: Yes.

7 MR. MARTEL: Can you normalize the whole
8 forest?

9 MR. HYNARD: Well, a normal forest is one
10 in which there is an equal area of the forest in all
11 age classes. I have no idea why it's called normal
12 because I have never heard of one like that. It would
13 be quite abnormal in the natural world.

14 The forest that we have in Ontario, or
15 that we would have on any one management unit is a
16 forest that we inherited from nature, it's the product
17 of natural disturbances which has, to be truthful, been
18 altered over time by the influence of man. For
19 example, putting out forest fires had a tremendous
20 influence on the present age-class structure of the
21 forest. Instead of it burning and regenerating itself,
22 it grew older.

23 Similarly our harvesting practices are or
24 have been to date largely market driven. In other
25 words, we are unable to cut at a faster rate because it

1 would require more mills and more demand for the
2 products and more capital and so on. It has been
3 largely market driven.

4 So between the aging of the forest,
5 caused in part by putting out forest fires, and the
6 relatively slower rate of harvesting as a result of
7 this market situation, we have inherited this aging
8 forest.

9 Is it possible to turn that around?
10 Well, in theory it is, but in fact, in reality there is
11 still a lot of forces - force majeure - over which we
12 have no control. We still are largely market driven,
13 we just can't go - well, I think of my own unit as an
14 example, I have an age-class imbalance that is very,
15 very heavy towards the middle ages, not towards an old
16 forest at all. If I wanted to normalize that quickly,
17 it would mean that I would have to start cutting
18 immature stands now in order to do that.

19 Well, no one wants to cut these immature
20 stands because the timber is too small, there is no
21 market for it. It also would be a great waste of a
22 resource to do so because now that's middle aged it has
23 the great potential to become high value. So not only
24 is it impractical, it's not necessarily desirable to do
25 so. It's just too -- to give forward the concept that

1 we want to have a normal forest and closing our eyes to
2 all of these other matters, would lead us in the wrong
3 direction.

4 So Dr. Euler is right, it's complicated,
5 it isn't simple.

6 MR. MARTEL: You keep talking about it as
7 though it's something that -- I mean the term comes up
8 over and over again and yet it's almost like living in
9 a fairy world.

10 MR. FREIDIN: Mr. Martel, I would just
11 refer you back to the evidence of Dr. Osborn on this
12 matter. He described the normal forest as an ideal to
13 which you would attempt to work towards knowing that
14 you will probably never get there.

15 MR. HYNARD: Yes. And you may not start
16 working towards it immediately. In my own case I am
17 decelerating in some working groups, in fact slowing
18 and delaying that time that I will in fact normalize
19 because of the adverse effects that it will have if I
20 was to rapidly normalize.

21 Yes, it's a theoretical ideal towards
22 which we strive and because of these practical and
23 other considerations I am not sure we ever attain.

24 MR. HANNA: Q. Mr. Hynard, is that not
25 the definition of a goal?

1 MR. HYNARD: A. An end towards which we
2 direct our efforts.

3 Q. But which we realize we may never
4 attain.

5 A. Well, yes, I think it largely is.

6 Q. And that is the difference between a
7 goal and an objective, an objective is something we can
8 attain, it is sort of that interim to get to the goal?

9 A. Yes, I think that is inherent in
10 those means.

11 Q. Now, Mr. Hynard, the reason that you
12 have this preponderance of middle aged forest - I'm
13 sort of starting to look at myself and get worried - is
14 that not in essence what these authors are saying, in
15 that they are saying: We are letting our future be
16 dictated by the mistakes of the past?

17 A. Well, the events of the past. They
18 are being dictated by the events of the past, I
19 wouldn't call it necessarily mistake and cast the
20 judgment on history, including natural history, and
21 call it a mistake. It's an event, we are dictated
22 largely by the events of the past.

23 Q. I appreciate that, but I think the
24 point that they are saying is, those factors that we
25 can control -- I don't think the authors are suggesting

1 that a forest fire is a mistake, I think they are
2 suggesting those actions we had control over would be
3 the mistakes.

4 A. Well, I can understand their use of
5 the word mistake. However, it kind of has this
6 connotation of blame. And down in my unit, I mean, the
7 use of the forest was what built the local economy, it
8 settled that part of the country. I don't know if that
9 was a mistake, certainly was an event.

10 THE CHAIRMAN: Do you think you should be
11 managing wildlife on the basis that you will be
12 attaining in the near future a normal forest?

13 DR. EULER: Well, it's so unrealistic
14 that, no, I don't see how we can.

15 THE CHAIRMAN: And even if you were
16 attempting to attain a normal forest at some distant
17 point in the future, could you alter the way of your
18 wildlife management today on the basis that that would
19 be attained some day? I mean, do you gear your
20 wildlife management to the conditions of today, or do
21 you gear them and set them up in the hope that a goal
22 like the normalization of the forest will be reached?

23 DR. EULER: We try to set them up so that
24 whatever happens in the future we can cope with it.
25 And these authors are saying that wildlife management

1 will be a little easier with the normal forest and that
2 is true, but we are going to try to say -- we are going
3 to cope with whatever that forest is like.

4 If it's normal, great, we can deal with
5 that and our jobs will be easier; if it isn't normal,
6 we can deal with that as well.

7 THE CHAIRMAN: And you are dealing very
8 much today with the non-normal forest?

9 DR. EULER: That's right.

10 THE CHAIRMAN: Which you recognize as
11 being non-normal?

12 DR. EULER: That's right. And I think
13 the world normal here refers to a normal curve or a
14 bell-shaped curve. It just talks about the age
15 structure being normal. And as of right now it's not
16 normal because there is a preponderance of this old
17 growth. So the curve would be skewed to the one side.

18 MR. HANNA: Q. Mr. Hynard, is that your
19 interpretation of an old forest, or is a normal forest
20 even-age classes?

21 MR. HYNARD: A. Yes. It doesn't have a
22 bell shape to it. If you put -- it would be a series
23 of histograms, it's sort of a flat line actually.

24 But Mr. Hanna's remarks were very, very
25 helpful this afternoon. I certainly could identify

1 with much of what he said and I am sure we all could
2 here.

3 The integration between wildlife and
4 forestry is complex or it can be and I am thinking of
5 the case of deer. Deer -- I know white tailed deer
6 better than moose because that is what I have down in
7 my country and Mr. Hanna lives not that far away.

8 Down at the south end of the Minden unit
9 it's mostly private land and largely open pastureland
10 over these very thin soils over top of limestone
11 tablelands, very fertile, rich, friable soil but very
12 shallow. There is quite a large population of deer
13 down there and in the springtime and during the summer
14 they graze largely on forbs.

15 The north end of my unit is entirely
16 different, it is heavily forested with middle aged and
17 older stands of tolerant hardwoods on entirely
18 different soil types and the white tailed deer there
19 feed on entirely different plants. In the springtime,
20 they are largely eating the spring flowers that come up
21 first before leaf out and during the early summer they
22 are doing leaf stripping and shoot stripping of the
23 longating regeneration. Their habits are entirely
24 different.

25 I find it remarkable how similar the deer

1 numbers are on those two totally different habitat. I
2 have always thought of deer and a number of other
3 wildlife creatures as opportunists that way.

4 I don't know that there is a great deal
5 of benefit to manipulate the forest intentionally to
6 provide another theoretically normal forest for the
7 purpose of wildlife if in fact you don't necessarily --
8 they are not necessarily so sensitive to that as they
9 in theory appear to be.

10 And I think that's true of timber
11 production too, that foresters would like to have a
12 normal forest because then everything is just ticking
13 along just fine. I mean, it's the same every year:
14 You pick your oldest stand, you cut it, you regenerate
15 it, and next year you move on to your now oldest stand,
16 but it's not necessarily in our best interest to do so.

17 And that example of cutting immature
18 timber, which isn't yet ready for cutting and really
19 isn't going to give you your best benefits and really
20 for which there is no market, is something to be
21 avoided. So I think we have to look at things in very
22 a practical sense as well as theoretical.

23 Q. You are suggesting that these three
24 authors are quite theoretical then?

25 A. No, no, not at all. I haven't read

1 them. Dr. Euler stole the paper during the break and
2 read it.

3 Q. But I'm not -- these aren't my
4 thoughts I am putting forward, these are the thoughts
5 of three Ministry biologists.

6 A. Yes, and I think theoretical idea --
7 like theory is excellent. I think -- I mean, as a
8 general rule to take a theory and test it against your
9 objectives is an excellent thing to do.

10 Q. Mr. Hynard, are you familiar with a
11 paper by a Dr. McGuinness and Mr. Dennis Voigt in the
12 Prime Site Conference in 1987 in which they quoted a 50
13 per cent higher productivity and higher quality habitat
14 for deer?

15 A. No, I am not familiar with that
16 paper.

17 Q. Thank you. Dr. Euler, back to the
18 paper here. Is not the essence of this paper forward
19 looking in trying to look at the forest in the same
20 sort of time horizon and scale that a forester looks at
21 it in terms of future rotations. Is that not sort of
22 the general thrust of this paper?

23 DR. EULER: A. Indeed it is.

24 Q. And would you say that the thrust of
25 their argument is, if we invest today and, if you will,

1 bear the burden of the cost - and Mr. Hynard has
2 explained some of the cost you could possibly incur at
3 least in his management unit, the boreal forest, it
4 might be the cost of the increased roads and smaller
5 clearcuts - that that will pay some benefit in the
6 future?

7 A. Yes. Quite clearly that is the
8 thrust of their argument.

9 Q. And their argument is not contingent
10 on reaching the normal forest, but looking down the
11 road and saying that is a direction we would like to go
12 and here's a way in which we can move in that direction
13 that has benefits both for wildlife and forestry?

14 A. Well, they're advocating that we
15 strive to achieve the normal forest, yes.

16 Q. Mr. Greenwood, I don't think you have
17 had a chance to read the paper, but one of the premises
18 in the paper is that if you have these smaller stands
19 and you have diversity of age classes that your
20 likelihood of blowdown will be reduced. Can you
21 comment on that?

22 MR. GREENWOOD: A. I couldn't comment on
23 such a general supposition on the basis that blowdown,
24 in my experience, is far more related to site and
25 species than age-class distribution.

1 The supposition includes some connotation
2 that you won't have to open the forest as much or the
3 pattern with which you open the forest would change.
4 But, again, I would suggest that it's strongly related
5 to species and actual site.

6 Q. So, if I had a stand that -- say a
7 black spruce stand that had grown up in a hundred
8 acre -- or hundred hectare site and the surrounding
9 area was, if you will, young black spruce that I would
10 have the same likelihood of blowdown in that stand
11 regardless, as if I went in, it was all mature black
12 spruce and I went in and harvested that hundred
13 hectares in the middle of a mature black spruce stand?

14 A. I am not too sure of your line of
15 questioning. In both cases you have removed all of the
16 mature timber which is susceptible to blowdown.

17 Q. No, I appreciate that. I think the
18 argument is that because that stand -- that mature
19 stand develops over time with an edge exposed to wind;
20 in other words, from the time it's a small tree to the
21 time it grows up it's exposed to, if you will, the
22 elements.

23 A. Yes.

24 Q. And if I have young trees beside the
25 old trees and I cut the old trees, the young trees are

1 not going to blow down I think is the essence of their
2 argument.

3 A. I don't follow your logic there, I'm
4 sorry, or at least your understanding of their logic.

5 In both cases -- I repeat again, in both
6 cases you have removed the timber which is susceptible
7 to blowdown which is the mature timber. It doesn't
8 matter whether you do that with large areas of the same
9 age-class or small areas of that age-class, you have
10 removed the susceptible timber to blowdown.

11 MR. HANNA: Perhaps, Mr. Chairman, can I
12 ask Mr. Freidin if Dr. McNicol is going to come forward
13 and speak to this because it is probably easier to have
14 the author himself speak to this.

15 Is he expected to be on another panel?

16 MR. FREIDIN: At the moment, no. We may
17 have to call him in reply I think.

18 MR. GREENWOOD: Mr. Hanna is there a
19 section of the paper that refers to this or that you
20 were referring to?

21 MR. HANNA: Q. Yes, there certainly is.
22 It's actually spread throughout. I have made a summary
23 of the elements that they have identified. One of the
24 issues they have identified in terms of the normalized
25 forest --

1 MR. HANNA: Normalized forest -- I think,
2 Mr. Chairman, just so we all understand what they are
3 saying. I think what they are proposing is we have to
4 build more roads, we have to access more of the forest.
5 By having greater access to the forest we can spread
6 the cut over a broader area.

7 Q. Perhaps, Dr. Euler, can you confirm
8 that that is the essence of what they are proposing?

9 DR. EULER: A. Yes, in my view that is
10 the essence of what they are proposing.

11 MR. HYNARD: A. I think the factors to
12 think about with respect to blowdown are species, very,
13 very important - and we talked about this earlier -
14 site, susceptible species on shallow sites, and sites
15 with a high water table are more susceptible, age is
16 another factor. Trees become more susceptible to
17 windthrow as they age, so mature stands are more
18 susceptible and then as stands age further and the
19 stand breaks up and stocking levels fall the stand is
20 now thinner, its vulnerability to windthrow is even
21 greater.

22 Trees that are grown in the open during
23 the course of their life tend to have fuller crowns and
24 fuller root systems and are more windfirm generally
25 than those that are grown in stand conditions. I think

1 those are the factors.

2 Q. And is that not fair, that's the
3 essence of what they are saying?

4 In other words, if we have a stand that
5 develops over time with, if you will, the trees on the
6 edge because they are open grown and they get windfirm
7 and whatever, that you don't have blowdown because the
8 trees grow up in that environment, and then when we can
9 those trees, the other trees that are there that still
10 reach high enough to be susceptible, have that
11 opportunity also to be able to become windfirm?

12 A. Yes. I can understand the logic
13 behind it. I think, again, it is the question of
14 theory and practice.

15 If we had a forest like that we might
16 have a better degree of windfirmness, it is possible,
17 but to take a very, very large tract of overmature
18 timber, which is what we have facing us, and attempt to
19 change it into this smaller tracts all over in a
20 helter-skelter pattern or even an organized pattern, to
21 break it up and disperse different age-classes through
22 it for this amongst other purposes, would in fact
23 result in greater blowdown because you would be
24 reducing the size of the cut, increasing the amount of
25 the edge of this old timber that you are in the middle

1 of. I mean, that --

2 Q. Is that not the essence of their
3 argument? In other words, we have to, if you will,
4 bear certain costs now that will reap benefits for all
5 future forests?

6 A. Yes, I think that's fair. That's
7 what I understand to be coming from that, and I think
8 that's a fair thing to look at.

9 We do things now at a cost in order to
10 achieve benefits in the future and we have to weigh
11 what those costs are and what those benefits will be.
12 If we are in very old timber that is in a very decadent
13 state and it is a non-windfirm species and it is on a
14 shallow or -- on a shallow site, we are going to suffer
15 tremendous losses for this theoretical value of having
16 a different forest, a different pattern in the future.

17 And I think we have to think about that
18 very carefully. I believe in looking at the theory, I
19 do, and being a field forester I'm a practical man and
20 I like to look at the real world too.

21 MR. GREENWOOD: A. And in fact with this
22 practicality you have added a second factor now that
23 you didn't add when you just described the normalized
24 forest. And when we were discussing the normalized
25 forest for Mr. Martel, we were talking about the

1 ability to create equal areas in all age-classes when
2 one looks at the forest in totality.

3 Now, you're saying that those age-classes
4 must be also equally distributed throughout the
5 management unit, and that also is -- that's another
6 factor now. You can have a normal forest where all of
7 the 0-20 is in one corner, all of the 20-40 is the
8 middle and all the 40-80 is in another corner, and
9 that's not going to solve -- that is in fact a normal
10 distribution of those age-classes in terms of a timber
11 perspective, but certainly not the distribution of
12 age-classes that now you're suggesting these authors
13 also would like to have.

14 So in terms of this theoretical becoming
15 even less feasible, when you start looking at that as
16 well, it is probably less feasible.

17 Q. You must have read my questions, Mr.
18 Greenwood, because my next question was: Is not the
19 basic difference between the biologist and the forester
20 the spacial distribution of the stands and the optimum
21 time of harvest of some stands?

22 A. The spacial distribution of the
23 stands is certainly of concern to the wildlife
24 biologist and, in fact, our guidelines speak to that.

25 Q. It is not to the forester, not to the

1 same extent?

2 A. Not to the same extent. And, in fact
3 your blowdown situation, as just described, is an
4 example of that. If in fact I was concerned about
5 blowdown in that stand and was not concerned for any
6 other value, I would harvest the whole stand no matter
7 how large it is and, therefore, I would not have
8 blowdown in that stand.

9 I could then regrow that stand to an age
10 where blowdown was then a potential problem and
11 reharvest it and, therefore, I have no blowdown concern
12 but that does not take into account any other values in
13 spite of that.

14 Q. And one of the arguments that they
15 are putting forward to that logic is, No. 1, large
16 extensive stands like that are more susceptible, for
17 example, to fire; is that correct?

18 A. Potentially so. I don't think it is
19 quite that simple.

20 Q. And you were also faced with, if you
21 will, by not accessing more of the forest lower
22 resource utilization?

23 A. I didn't follow that last one.

24 Q. It is hard to go into a salvage
25 operation if you don't have a road to go in and do it?

1 A. Correct. But at the same time there
2 is a balancing factor that you also couldn't afford to
3 operate in a dispersed way completely throughout the
4 whole management unit.

5 Q. No question. I don't think these
6 authors are suggesting that we will reach this goal. I
7 think they clearly say it is a goal. It's simply -- we
8 have to look at what the paper is saying. It is an
9 investment, it is looking at -- looking at today and
10 trying to look at the future and how do we want to have
11 our forest look in the future for all of our
12 generations, not just today.

13 THE CHAIRMAN: Gentlemen, how do you get
14 around the market driven aspect of the whole thing, in
15 the sense that if you don't have a market for wood in a
16 particular age-class, it's just not there, how do you
17 go about cutting it down and what do you do with what
18 you've cut down?

19 MR. HYNARD: Yes, yes.

20 MR. GREENWOOD: You wouldn't cut it down
21 because you couldn't afford to cut it down. You would
22 allow nature to harvest it. So it would either succumb
23 to insect, disease or fire or wind.

24 MR. HYNARD: You would be powerless there
25 simply because of the practicalities. In theory you

1 could still continue and strive towards your goal. You
2 could put fire into it, you could cut it all down and
3 drag it off the site and plant the site up.

4 I mean, theoretically you could proceed
5 just the same way. But, again, it's the practicalities
6 of it. And those are the forces that we have to face
7 day-to-day on the job.

8 I am certainly not at odds at all with
9 the suggestion that it would be nice to have a forest
10 like that with roads in place and normal distribution
11 of age-classes and a dispersion for those other forest
12 uses and values. I wouldn't have people saying: My
13 God, why did you cut such a big area all at once,
14 because the timber --

15 MR. HANNA: Q. Isn't the point that they
16 are saying: We don't want our children to be saying:
17 Why did our father's cut all those large tracts of
18 wood?

19 MR. HYNARD: A. Yes, yes. And I guess
20 my answer to you would be, you know, why would we let
21 this occur, and it would be for practical reasons. The
22 costs of all those roads, the loss of timber - and we
23 said there would be losses in the situations that we
24 described - trying to match again the species and
25 products to market demand and, after all, that is the

1 purpose of the undertaking. It's simply not feasible
2 for us to do that.

3 Should we strive towards it? I think we
4 do strive towards it. Within those constraints of
5 practicality and being able to do it and financially
6 able to do it, we do strive in that direction.

7 MR. GREENWOOD: A. And, in fact, that's
8 what the goal of normal forest is. So we are striving
9 towards the same thing.

10 We are now talking about adding the
11 practicalities which determine the rate at which you
12 can move towards that, the way in which you can move
13 towards that, and having had the paper put in front of
14 me now, I think this is where maybe the authors haven't
15 been completely reflective of what is happening today
16 when they make the comment that -- you didn't finish
17 the sentence when you read it in a few minutes ago:

18 "In essence, we are letting our future be
19 dictated..." --

20 Q. Excuse me, Mr. Greenwood, can I get
21 the page reference?

22 A. I'm sorry, page 15 under
23 Normalization, which I understand was where you were
24 reading from:

25 "In essence, we are allowing our future

1 be dictated by the mistakes of our
2 past..."

3 Which is what was put on the table. Then the rest of
4 the sentence reads:

5 "...rather than taking positive steps to
6 correct what is now an unbalanced
7 forest."

8 I dare say a major objective of most of
9 the management plans where there is an unbalanced
10 forest is just that, to take positive steps to move
11 towards a less unbalanced forest towards - sorry, an
12 unbalanced - no, towards a less unbalanced forest -
13 it's late in the day - and, therefore, I don't
14 understand that comment at all. So I think we are --

15 Q. The comment in this paper?

16 A. That we are not taking positive steps
17 to correct what is now an unbalanced forest. I would
18 suggest that the concept of normality and the goal of
19 normality is just such a step.

20 Q. So this is an example of Ministry
21 biologists not understanding forestry?

22 A. I can't speak for what they meant and
23 what they understood. They may be talking the rate
24 that we are moving towards it, the method that we are
25 moving towards it.

1 Q. I think it's fair to the authors that
2 I don't think they're -- in fact, I think it's a very
3 practical paper, they are not suggesting that we are
4 going to build roads across the whole province
5 tomorrow, I think what they are trying to argue for is
6 in fact the guidelines, in saying that there is benefit
7 in the guidelines inasmuch as the habitat that they
8 produce both for forestry and for wildlife.

9 That is the essence of their argument.
10 The question is simply a matter of: Make sure you
11 include those benefits, those non-timber benefits when
12 you are looking at these types of decisions in the long
13 term.

14 A. And I think that we are arguing hard
15 here to agree with each other. We're getting caught in
16 the words.

17 If we said: Is there a conscious effort
18 to disperse the cut out there for wildlife habitat and
19 disperse, therefore, the age-class distribution which
20 is renewed, that effort is in place right now.

21 Q. Right. And the only issue - and I
22 come back to where I started with you, Mr. Greenwood -
23 and that is the spacial distribution of the stands and
24 the optimum time that they are harvested. I am trying
25 to get the essence of what we are dealing with here.

1 A. Sure.

2 Q. Everybody is trying to move in the
3 same direction?

4 A. Right.

5 Q. It's matter of making sure we put all
6 the factors in the equation when we decide what is the
7 practical?

8 A. Sure. And it comes back to the
9 discussion we had as to what is a clearcut and what
10 does the guideline mean with respect to size of
11 clearcut and all of those other factors as well, and
12 the basis of all of that discussion was dispersing the
13 cut.

14 MR. HANNA: Mr. Chairman, I think it
15 would be more productive if I talked to the author
16 about this because obviously they are going to have --
17 be able to speak to it more directly.

18 They are Ministry employees. I believe
19 Dr. McNicol has been identified as being, how do you
20 say, one of the key people in the application of the
21 guidelines. I realize I could possibly call him in
22 my -- as our own witness. I am really thinking about
23 the interest of time here and trying to move along as
24 quickly as I can.

25 I have a whole series of questions here

1 to ask Dr. Euler that really reflect on this paper. I
2 don't know the best way to proceed. I am happy to go
3 through it and proceed with Dr. Euler. I have dealt
4 with this business of normalization, but I am going to
5 deal with the other issues subsequently.

6 THE CHAIRMAN: Mr. Freidin, what is your
7 position on a recall of any witness?

8 MR. FREIDIN: I'm sorry, I was discussing
9 another matter.

10 THE CHAIRMAN: What's your position on a
11 recall of Mr. McNicol?

12 MR. FREIDIN: At the moment I am not in a
13 position to indicate that he will be recalled. I think
14 we have these people on the stand, people to be
15 examined on this matter. At the present time I think I
16 will take the position that I have no intention of
17 calling Mr. McNicol. It's part of our
18 evidence-in-chief.

19 MR. HANNA: Q. Dr. Euler, could you turn
20 to page 18, please. I would like to speak to you about
21 some comments under cut size?

22 DR. EULER: A. Yes, okay.

23 Q. Do they not arrive at basically the
24 same conclusion as Dr. Baskerville?

25 MR. FREIDIN: What page are you on?

1 MR. HANNA: I'm sorry, it is page 18
2 under cut size, the second sentence I am going to refer
3 to.

4 Q. Do they not arrive at the same
5 conclusion as Dean Baskerville with respect to the
6 likely response of forest companies to constraints when
7 they say:

8 "The response to the guidelines is often,
9 therefore, to leave as small a block of
10 residual timber as possible that still
11 meets the guidelines."

12 DR. EULER: A. Yes, that's correct.
13 This is the constraint management concept that
14 Baskerville talks about.

15 Q. And they go on and explain the
16 difficulties that that presents?

17 A. Mm-hmm, yes.

18 Q. And I believe, continue reading on
19 there at the bottom of the page, the last part
20 sentence, it says:

21 "In addition they have..."

22 Over to page 20:

23 "...little or no useful function in
24 helping us reach a more balanced
25 distribution of age-classes or stand

1 structure. These small low quality
2 blocks of standing trees may also be of
3 low value for the wildlife as they are
4 for timber."

5 A. That's what the authors say, yes.

6 Q. Do you disagree with that statement?

7 A. I think, again, they have perhaps
8 overstated it a bit. There is certainly a core of
9 truth there. I would have used the word sometimes
10 rather than often, but there is a core of agreement.

11 Q. The next paragraph basically argues
12 for larger shelter patches for both forestry and
13 wildlife reasons; is that not right?

14 A. Well, larger blocks of timber. I
15 wouldn't equate that with shelter patches.

16 Q. Well, excuse me, I was -- the
17 sentence before I thought was referring to the leave
18 blocks -- or the paragraph before, and this is saying
19 an alternate to that?

20 A. Well, I guess we would have to ask
21 the authors what they meant. I just didn't interpret
22 that.

23 Q. Well, what is your interpretation of:
24 "...as small a block of residual timber
25 as possible that still meets the

1 guidelines."?

2 A. Well, those could well be shelter
3 patches, yes.

4 Q. And accepting that they are shelter
5 patches, they are arguing in the second paragraph there
6 on page 20 for larger shelter patches, both for
7 forestry and wildlife reasons?

8 A. Well, they said larger blocks of
9 timber. Those could be things other than shelter
10 patches. It could be quite a variety of larger blocks
11 of timber, they may be -- we would have to ask them. I
12 just didn't happen to read it that way.

13 Yes, they want a block that's large
14 enough to make it economically feasible to come back
15 for it.

16 Q. Under the next section, Timing, on
17 page 20.

18 A. Yes.

19 Q. My reading of that is that they seem
20 to have rather strong views about the return cuts and
21 they suggest that the requirement in the guidelines for
22 a minimum height of regeneration may be inadequate to
23 achieve their view of the optimum habitat?

24 A. Mm-hmm.

25 Q. And on page 21 they recommend a

1 return cut -- I'm looking here on the first full
2 paragraph, the last sentence:

3 "The preferred time could be expanded to
4 as much as half the rotation age in a
5 forest with a poor distribution of
6 age- classes and relatively uniform stand
7 composition."

8 Would you disagree with this statement?

9 A. No, I wouldn't disagree with that
10 statement.

11 Q. And the last paragraph there, they
12 indicate that if you did follow this approach the
13 timing of the return cut ceases to be an issue in the
14 future, we no longer have to deal with it, there is no
15 longer the foresters and the biologists fighting any
16 more in terms of when that should happen because we set
17 in course -- we set in motion a sequence of events
18 that, if you will, future generations will be able to
19 deal with?

20 A. Are you asking me to agree with that?

21 Q. I am asking if that's -- that's my
22 interpretation. I am asking if you agree with that
23 interpretation?

24 A. I would agree to the extent that
25 timing of the return cut would cease to be as big an

1 issue as it is now. I am not so sure I would agree
2 with all that fighting and hollering that's going on,
3 because I don't think that occurs.

4 Q. We will get to their conclusion in
5 that respect in a moment. We have already talked about
6 this, but I just refer to you on page 24 what I think
7 is the essence of the question they are putting
8 forward.

9 And I'm looking at the last sentence
10 under Normalizing the Cut and the question is: How do
11 we change through time the imbalance which has
12 developed over the last 75 to 100 years?

13 A. Mm-hmm.

14 Q. I am reading from page 24 under
15 Normalizing the Cut: The solution is normalizing the
16 cut, the last sentence in the first paragraph.

17 Now, can you --

18 MR. FREIDIN: I'm just wondering how many
19 people got -- if we are getting into a forestry
20 question, I would like my witnesses to have a copy of
21 this article so they can follow along in this
22 discussion.

23 DR. EULER: Maybe even a minute or two to
24 read it.

25 MR. HANNA: Mr. Chairman, the only reason

1 I didn't do that is these are biologists and I would
2 have thought these were biological views that were
3 being put forward. But I am happy to have the
4 foresters comment on it also.

5 MR. OLDFORD: I am the closest one to the
6 paper, Mr. Hanna. On 24, the mention there is with
7 respect to the imbalance that's developed over the last
8 75 to 100 years, and it's developed over hundreds and
9 hundreds and hundreds of years, not largely as a result
10 of man's intervention but as a result of the way the
11 forest developed in the north and the intervention of
12 natural disturbance such as fire.

13 And I would bring the Chairman's
14 attention - I would like to - to the first sentence
15 there where the authors say that:

16 "Normalizing the cut by altering age
17 structure and distribution of stands in
18 the boreal forest is a task of monumental
19 proportion."

20 And I believe that is the impression that
21 we have been trying to leave you with.

22 Q. I don't think there is any question
23 about that. I don't think there is any question about
24 the authors, it's just my interpretation of what they
25 are saying. It's again, where we should be going and

1 what we should be putting in the equation when we
2 decide on what the costs are, if you will, for the size
3 of cut.

4 That seems to be the thrust of this whole
5 paper, in fact its title is indeed: Impact on
6 Investment and I think that is the thrust of what they
7 are trying to deal with.

8 A. There is one aspect of cost that I
9 would like to leave with you. The cost of roads and --
10 roads and landings and road construction generally and
11 maintenance in Ontario today is probably between - and
12 I can be plus or minus 10 per cent - between \$5.50 and
13 \$6 a cubic metre. So you are looking at a total roads
14 expenditure right now, the way we are doing business in
15 Ontario, in the order of \$100- to \$120-million.

16 So if you are going to change the way we
17 are doing business and distribute the cut say by a
18 factor of twice what it is now, we are talking about
19 very significant increases in expenditure in the area
20 of roads alone, like a very big expenditure of money,
21 maybe in the order of 30, 40, \$50-million a year.

22 Q. Right.

23 A. So that puts it in that context.

24 Q. I don't think there is any question
25 about that. I think that is the essence of what they

1 are doing. They are suggesting let's look at that,
2 let's look at what those costs might be. And I
3 believe, I estimated using Dr. Euler's numbers
4 \$188-million annually in terms of moose potentially
5 that might be -- we might be able to achieve in terms
6 of optimum habitat if we had this available to us.

7 THE CHAIRMAN: 180,000 moose or
8 \$180-million.

9 MR. HANNA: I believe it was
10 \$188-million, sir.

11 THE CHAIRMAN: \$188-million?

12 MR. HANNA: Yes.

13 DR. EULER: I know, but if we are going
14 to talk about that, we are going to have to get that
15 paper and talk about it carefully because that is not
16 revenue to the province, that is a concept of worth.

17 THE CHAIRMAN: All right. Why don't we
18 do this: It's towards the end of the day I think we
19 have all had a long day, I think the witnesses should
20 be allowed the opportunity overnight to read this paper
21 in its entirety if they so wish, so that when you come
22 back to it first thing in the morning all of the
23 witnesses will at least have had the opportunity to be
24 able to respond with the knowledge of what these
25 authors have said.

1 MR. HANNA: Mr. Chairman, also in the
2 interests of time, I have gone through and made copies
3 of the exhibits that I am planning to introduce.

4 I am happy to distribute them at this
5 time and we can have them. If we want to put exhibit
6 numbers on them tonight -- they are dealing with Mr.
7 Greenwood and I would like to give him an opportunity
8 to look at them over the evening, if we could.

9 THE CHAIRMAN: All right. Okay.

10 MR. HANNA: I don't know whether you want
11 to give them numbers or we'll just put them on and give
12 them numbers as we go. I think you will probably
13 accept them all into evidence, but it's up to you how
14 you want to deal with it.

15 THE CHAIRMAN: Oh, you want to distribute
16 them now?

17 MR. HANNA: I think it's better, then
18 they --

19 THE CHAIRMAN: Okay. Let's do that.

20 MR. HANNA: Perhaps I can just read them.
21 Should I read them individually to you, sir?

22 THE CHAIRMAN: Okay.

23 MR. HANNA: I haven't these in any order.
24 They are just -- the first is: A Method for Assessing
25 the Environmental Sensitivity of Land to Forest

1 Harvesting in Central and Western Newfoundland.

2 Mr. Chairman, I might say - I hate to say
3 this - but unfortunately the Federation of Anglers &
4 Hunters is on their last breath in terms of finances
5 and I have not -- our photocopying budget is ten times
6 over what it was and I haven't made full copies of the
7 complete report, only those portions that I'm going to
8 refer to.

9 If Mr. Greenwood wants a complete copy, I
10 am happy -- I have the full copy of the reports here.
11 If he wants the full copy, I'm happy to give it to him.

12 MR. GREENWOOD: Yes, I would like the
13 full copy.

14 THE CHAIRMAN: And your questions are
15 going to be confined to Mr. Greenwood on these
16 documents?

17 MR. HANNA: Just the material I am
18 submitting, yes, sir.

19 THE CHAIRMAN: All right.

20 MR. HANNA: Perhaps I will just read them
21 all off and I'll bring them up and distribute them to
22 the Board. The next --

23 THE CHAIRMAN: That will be Exhibit 520.
24 The next one -- sorry, Exhibit 519. The one you are
25 now reading is Exhibit 520.

1 ---EXHIBIT NO. 519: Document entitled: A Method for
2 Assessing the Environmental
3 Sensitivity of Land to Forest
4 Harvesting in Central and Western
 Newfoundland authored by Van
 Kesteran.

5 MR. HANNA: Impacts of Forest Harvesting
6 on Physical Properties of Soils with Reference to
7 Increased Biomass Recovery, A Summary.

8 ---EXHIBIT NO. 520: Document entitled: Impacts of
9 Forest Harvesting on Physical
10 Properties of Soils with Reference
11 to Increased Biomass Recovery, A
 Summary authored by Standish,
 Commandeur, Smith.

12 MR. HANNA: Oh, the authors are
13 Standish --

14 THE CHAIRMAN: Is this for the first one?

15 MR. HANNA: I will give you the author
16 for the first one in a moment, sir.

17 THE CHAIRMAN: Okay.

18 MR. HANNA: Standish, S-t-a-n-d-i-s-h
19 Commandeur, C-o-m-m-a-n-d-e-u-r and Smith.

20 The next -- oh, excuse me. The first
21 author, Mr. Chairman, is Van Kesteran, V-a-n (new word)
22 K-e-s-t-e-r-a-n. Both of the publications that I have
23 indicated -- I have mentioned so far are both Canadian
24 Forestry Service publications.

25 The next exhibit --

1 MR. CASSIDY: Well, Mr. Chairman, if Mr.
2 Hanna continues to enter exhibits I feel it only fair I
3 should remind him of the obligation that exists on the
4 party of that is entering the one thousandandth exhibit
5 to throw a party.

6 MR. HANNA: How close are we, sir?

7 THE CHAIRMAN: We are up to 521. I think
8 you can bank on the fact that when we get near a
9 thousand, we will be vigilant as to who will be
10 entering the thousandth exhibit.

11 MR. HANNA: There may be a serious
12 attrition of exhibits at that point, sir.

13 THE CHAIRMAN: We can assure you it won't
14 be the Board.

15 MR. HANNA: Okay. The next one is the
16 Compaction by Forestry Equipment and Effects on
17 Coniferous Seedling Growth on Four Soils in the Alberta
18 Foothills, and the author is Corns, C-o-r-n-s.

19 THE CHAIRMAN: Why can't foresters learn
20 to come up with some short titles.

21 ---EXHIBIT NO. 521: Document entitled: Compaction by
22 Forestry Equipment and Effects on
23 Coniferous Seedling Growth on Four
Soils in the Alberta Foothills,
authored by Corns.

24 MR. HANNA: The next is the Proposed
25 Policy for Controlling the Size of Clearcuts in

1 Northern Forest Regions of Ontario, the authors are
2 Flowers and Robinson.

3 THE CHAIRMAN: That one I think is in; is
4 it not?

5 MR. GREENWOOD: Yes, it is.

6 MR. HANNA: Ms. Blastorah has just
7 confirmed that it is. I don't -- I have looked to see
8 if it is.

9 MS. BLASTORAH: Mr. Chairman, another
10 version of a similar paper was marked Exhibit 157, but
11 apparently it is a different paper.

12 THE CHAIRMAN: Very well.

13 ---EXHIBIT NO. 522: Proposed Policy for Controlling
14 the Size of Clearcuts.

15 MR. HANNA: Mr. Chairman, there is one
16 other paper that I will provide to Mr. Greenwood this
17 evening that unfortunately is still out at the
18 photocopying shop and I haven't got the copy of it yet.

19 It is just a one-page summary. I think
20 it's something that someone can read in two or three
21 minutes, so it won't be too onerous for people to
22 assimilate.

23 THE CHAIRMAN: Any plans tonight, Mr.
24 Greenwood?

25 MR. GREENWOOD: If this is just the

1 extracted version, I am a little worried about what the
2 full length version looks like.

3 MR. FREIDIN: Mr. Chairman, I don't think
4 Mr. Greenwood should be expected to stay up late hours
5 going through all these documents, the fact that they
6 are lengthy and I am just indicating that it may very
7 well be - and I don't know - tomorrow when the
8 questions come out on these documents that it should be
9 appropriate for him, if he hasn't had the opportunity
10 to read the full document but still wishes to do so, to
11 answer the questions that he should feel free to so
12 indicate to the Board.

13 THE CHAIRMAN: Yes. And you understand,
14 Mr. Hanna, the difficulties in presenting documentation
15 at the last minute that the witnesses haven't seen
16 before and that they do require an opportunity to
17 apprise themselves of those documents before they
18 should be expected to answer questions.

19 MR. HANNA: I took your directions this
20 afternoon, Mr. Chairman. That is why I produced these
21 at this time.

22 Perhaps I could ask the Board's
23 direction - and I hate to ask procedural questions, but
24 I really feel at sea at it - is there a way that you
25 should go about these sort of things to try and

1 expedite this? Like, should I give it to them a week
2 ahead. Like what is sort of the --

3 THE CHAIRMAN: Well, as far ahead as
4 possible would be helpful to any of the parties that
5 are going to be required to answer questions on them.
6 If one of the parties knows that they are going to be
7 questioning on documentation, it's documentation that
8 is going to be produced, you should exchange it amongst
9 the other parties as in timely a fashion as possible.

10 In other words, the longer they have got
11 the documentation, the less chance there is of delays
12 in terms of allowing them time to apprise themselves of
13 it.

14 There is no fixed rule. It's just
15 certainly the day before or immediately before the
16 questions are posed is not satisfactory. What I am
17 saying is --

18 MR. HANNA: You are always faced, I am
19 sure you appreciate Mr. Chairman, with these sorts of
20 things where you have an expert who comes forward and
21 who has developed, if you will, a comprehensive
22 knowledge and has prepared himself for these sorts of
23 hearings. You know, I'm sure you appreciate it's a bit
24 of give and take in terms of what is appropriate and
25 what is not.

1 THE CHAIRMAN: And I hope you appreciate
2 that we are trying to be as accommodating as possible
3 but, by the same token, we have to be fair to the
4 witnesses as well.

5 MR. HANNA: Yes, sir.

6 THE CHAIRMAN: Okay. I think we will
7 adjourn for today and we will return tomorrow, I
8 suppose at nine o'clock and we will continue on
9 tomorrow until we--

10 MR. HANNA: Drop.

11 THE CHAIRMAN: Finish or drop, whichever
12 is first. Okay.

13 MR. HANNA: Thank you, Mr. Chairman.

14 THE CHAIRMAN: Thank you.

15 ---Whereupon the hearing adjourned at 5:10 p.m.,
16 to be reconvened on Wednesday, April 26th, 1989,
commencing at 9:00 a.m.

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